CASINO CONTROL COMMISSION DECISIONS

JANUARY - JUNE 1990

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PREPARED BY THE LEGAL DIVISION

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-157
OAL DOCKET NO. CCC 00898-89
(CCC 00761-88 ON REMAND)
ORDER NO. 90-6-11

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	ORDER
v.	:	
ADAMAR OF NEW JERSEY, INC. AND ROBERT JAMES	:	
Respondents.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation of settlement entered into by the respondents and the Division of Gaming Enforcement 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 January 17 and February 7, 1990,

IT IS on this 14th day of February 1990, ORDERED that the initial decision-settlement is adopted; and

IT IS FURTHER ORDERED that Adamar of New Jersey, Inc. pay a civil penalty of $25,000 for violating N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25(b) and -1.27 and $15,000 for

violating N.J.A.C. 19:45-12(c), due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IT FURTHER ORDERED that Robert James is hereby reprimanded for violating N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25(b), -1.27 and -12(c) by negligently failing to supervise the issuance of credit at the Tropicana Hotel and Casino.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /am
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 898-89
AGENCY DKT. NO. 88-157
(CCC 761-88 - ON REMAND)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
ADAMAR OF NEW JERSEY, INC.,
AND ROBERT JAMES,
Respondent.

Barth F. Aaron, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Mark H. Sandson, Esq., for the respondents (Hankin, Sandson & Sandman, attorneys)

Record Closed: November 27, 1989 Decided: December 5, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on December 7, 1987, seeking sanctions against the respondent's casino license and casino key employee license as provided

for in N.J.S.A. 5:12-129 for alleged violations of the Casino Control Act. More specifically, the Division alleges that the respondents violated the provisions of N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25(b) and N.J.A.C. 19:45-1.27 by granting or extending credit to one casino patron with full knowledge that the gaming chips obtained through that extension of credit were used by another casino patron whose credit privileges were suspended for further gaming, and violated the provisions of N.J.S.A. 5:12-102m, N.J.A.C. 19:45-1.2 and N.J.A.C. 19:45-1.9 by falsely recording as a complimentary a payment of a fee or commission for allowing a player whose credit privileges were suspended to continue to play on credit.

PROCEDURAL HISTORY

The Division filed a complaint with the Commission on December 7, 1987, seeking sanctions against the respondents for the above-alleged violations of the Casino Control Act. By answer dated January 6, 1988, and received by the Commission on January 13, 1988, the respondents denied the allegations and requested a hearing. On January 19, 1988, the Commission transmitted the matter to the Office of Administrative Law, where it was received on February 2, 1988, 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 the matter before me on April 18 and 22, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Is the conferring of money or anything of value from one gaming patron to another gaming patron, wherein the conferrer has received the fund for the conferring of said money or thing of value from casino credit, violative of the Casino Control Act, specifically section 5:12-101 and N.J.A.C. 19:45-1.25(b) and 19:45-1.27, assuming a casino licensee has knowledge of the conferring of said money or thing of value, has knowledge that the conferee is a person who may not receive casino credit because of an overdrawn credit account and has received said funds for the purpose of continuing his gaming activities?

B. Did the Tropicana or Robert James or any person acting on behalf of or under any arrangement with the Tropicana or Robert James provide or allow to any person any credit or advance of anything of value or which

represents value with the knowledge that Harry K. Kim was thereby enabled to take part in gaming activity as a player while the credit privileges of Harry K. Kim were suspended as required by N.J.A.C. 19:45-1.27 in violation of N.J.S.A. 5:12-101a or N.J.A.C. 19:45-1.25(b)?

C. Did the Tropicana or Robert James or any person acting on behalf of or under any arrangement with the Tropicana or Robert James accept a counter check from Young N. Kang, Keum Y. Shin, Keum Hong Lee or Kyung Hui Paik with the knowledge that another person, to wit, Harry K. Kim, whose credit privileges had been suspended as required by N.J.A.C. 19:45-1.27, was enabled to take part in gaming activity as a player in violation of N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.25(b)?

D. Does a casino licensee or one of its employees violate the provisions of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25(b) and 19:45-1.27 by extending a credit to a gaming partnership wherein one of the partners has been suspended from receiving casino credit while the other partner has drawn on casino credit, thus allowing the partner who has been suspended from receiving casino credit to continue play with the funds received through casino credit by his gaming partner?

E. Did either respondent violated N.J.S.A. 5:12-102m and N.J.A.C. 19:45-1.2 by reporting and recording as "miscellaneous good will" a $5,000 payment to Kyung Hui Paik, which payment is alleged to have been a commission, fee, or discount against her debt for the purpose of compensating, rewarding or encouraging Kyung Hui Paik to provide to Harry K. Kim gaming chips with the intent of allowing Harry K. Kim to continue to be a credit player at the Tropicana while his credit privileges were suspended?

F. Did either respondent violate N.J.S.A. 5:12-102m and N.J.A.C. 19:45-1.9 by issuing as a complimentary a payment of $5,000 to Mrs. Kyung Hui Paik for a purpose not authorized by statute or regulation?

G. Pursuant to N.J.S.A. 5:12-129 and 5:12-130, what is the appropriate penalty for each of the violations of statute and regulation proven?

A timetable for the submission of prehearing briefs was also set at the prehearing.

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By letter dated May 10, 1988, and received by me on May 12, 1988, the respondents' attorney requested that issue "D" contained in the prehearing order be amended. On May 16, 1988, a telephone conference was held with all parties to discuss this request. By letter dated May 17, 1988, and received by me on May 20, 1988, the respondents' attorney submitted specific language for a revised issue "D." responded to the respondent's request. On May 26, 1988, a second telephone conference was held with the parties to discuss this issue. At that time, I granted the respondents' request and confirmed my order in a follow-up letter, dated June 7, 1988. The revised issue "D" is as follows:

D. Does a casino licensee or one of its employees violate the provisions of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25(b) and 19:45-1.27 by extending credit to a gaming patron who thereafter forms a gaming partnership with another patron who is a person who may not receive casino credit because of an overdrawn credit account?

Also on May 26, 1988, I granted the Division's request for an extension of time to submit its prehearing brief. I received the Division's prehearing brief on May 31, 1988, and I received the respondent's response brief on June 28, 1988. Several telephone conferences were held throughout the summer on a variety of procedural issues.

A hearing was commenced on September 14, 1988, at the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey, and continued into September 15, 1988. Late in the afternoon on September 15, 1988, the parties agreed to settle this matter. The hearing was adjourned, and the record remained open in order to afford the parties the opportunity to enter into a written settlement agreement. I received the written settlement agreement on October 3, 1988, and the record closed at that time. On October 4, 1988, I issued an Initial Decision approving the settlement.

The Commission considered my Initial Decision and heard oral arguments from the parties at its public meeting held on November 23, 1988. The Commission next discussed this matter at its public meeting held on January 19, 1989. Thereafter, by Order Number 89-3-14, issued on January 31, 1989, the Commission rejected my

Initial Decision and remanded the matter to the Office of Administrative Law for further proceedings.

In its rejection of my Initial Decision and remand of the matter, the Commission indicated several areas to be explored. The Commission first indicated that the original record left it with considerable uncertainty as to precisely what conduct constituted the admitted violations of section 101b of the Act and sections 1.25(b) and 1.27 of the regulations. For example, the Commission indicated it was not clear from the parties' stipulation whether the essence of the violations agreed to is that Adamar extended credit to individuals knowing that they would not participate in gaming activity as players, or whether it was Adamar's knowing extension of credit to an individual whose credit privileges had been revoked that merits the proposed sanctions.

Second, the Commission felt that the original stipulation did not resolve the issue under section 101a of the Act, namely, whether Adamar wrongly extended credit to one or more of the casino patrons named in the complaint with knowledge that the proceeds of this transaction were to be directed to the patron named Harry K. Kim. The Commission questioned whether or not the extension of credit to Ms. Paik, for example, was an arrangement to extend credit to permit Kim to gamble that was not authorized by the Act or Commission regulations.

Finally, the Commission felt that the original stipulation failed to resolve whether or not the $5,000 cash payment to Kyung Hui Paik violated the Act and the regulations. The Commission indicated that the parties may choose to explore whether the $5,000 cash payment constituted an illegal cash complimentary in violation of section 102m, or whether it might be regarded, not so much as an illegal cash complimentary, but as a payment to Ms. Paik for her part in assisting the casino to provide credit to Mr. Kim. The Commission noted that if it is established that the $5,000 payment was given for the purpose of subverting the regulatory process, rather than as a complimentary made an account of Ms. Paik's gaming losses, then the payment might well reveal far more culpable conduct by the respondents than the $25,000 penalty and a letter of reprimand would suggest.

On February 1, 1989, the Commission transmitted the matter to the Office of Administrative Law, where it was received on February 6, 1989, 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 telephone conference was held with the parties on February 15, 1989, in order to determine the issues in the matter and to schedule a hearing date. A hearing was scheduled for April 24, 1989, at the Municipal Courtroom, Somers Point City Hall, Somers Point, New Jersey. At this hearing, the parties entered into extensive settlement negotiations. The hearing was adjourned, and the record remained open in order to afford the parties the opportunity to enter into a written settlement agreement. By letter dated July 20, 1989, the Deputy Attorney General forwarded me and opposing counsel a draft of a proposed settlement agreement. Further negotiations were conducted throughout the summer. By letter, dated September 5, 1989, the Deputy Attorney General forwarded me and opposing counsel a proposed stipulation of settlement which had been approved by the Director of the Division of Gaming Enforcement. On October 20, 1989, I received a written settlement agreement which was signed by both parties. A hearing regarding the settlement agreement was held on November 27, 1989, at the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, and the record closed at that time.

The parties have agreed to a settlement of all issues in dispute and have prepared a stipulation indicating the terms thereof, which is attached and fully incorporated herein.

I have reviewed the record and the terms of the settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I further **CONCLUDE** that this matter is no longer a contested case. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 5, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 11 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

Joint Exhibits:

J-1	Not in evidence
J-2A	Memorandum of Leanor A. Mazzeo, dated September 15, 1987, re: Korean Players
J-2B	Tropicana Credit file for Young N. Kang
J-2C	Tropicana returned check file for Young N. Kang
J-2D	Tropicana collection file for Young N. Kang
J-2E	Tropicana credit file for Kyung Hui Paik
J-2F	Tropicana returned check file for Kyung Hui Paik
J-2G	Tropicana collection file for Kyung Hui Paik
J-2H	Tropicana credit file for Keum Y. Shin
J-2I	Tropicana all marker activity computer file for Keum Y. Shin
J-3J	Tropicana returned check filed for Keum Y. Shin
J-3K	Tropicana collection file for Keum Y. Shin
J-3L	Tropicana credit file for Harry K. Kim
J-4M	Tropicana returned check file for Harry K. Kim
J-4M-2	Tropicana counter check control log for March 5, 1987, and April 2, 1987
J-4N	Tropicana collection file for Harry K. Kim
J-4O	Tropicana all marker activity computer filed for Kyung H. Paik
J-4P	Tropicana player trip history computer file for Kyung H. Paik
J-4Q	Tropicana all marker activity computer file for Young N. Kang
J-4R	Tropicana player trip history computer file for Young N. Kang
J-4S	Tropicana player trip history computer file for Keum Shin
J-5T	Tropicana all marker activity computer file for Harry Kim
J-5U	Tropicana player trip history and player ratings for Harry Kim
J-5W	Memorandum form John M. Galloway, dated April 22, 1987, re: Credit Insurance
J-5Y	Memorandum from Lester Brzozowski, dated April 21, 1987, re: Credit Insurance

J-5X Copies of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25

J-5Y Interstate Protections Investigation asset investigations

J-5Z Memorandum from Leanor A. Mazzeo, dated April 28, 1987, re: Korean Players

J-5AA Memorandum from John Lee, dated May 7, 1987, re: Casino Credit

J-5BB Memorandum from Lester Brzozowski, dated May 12, 1987, re: Credit Insurance

J-5CC Memorandum from Lester Brzozowski, dated June 24, 1987, Korean Players Reserves

J-5DD Memorandum from Leanor A. Mazzeo, dated April 28, 1987, re: Korean Players' Deposit Dates

J-6 Transcript of Sworn Interview of Sharon A. Altman Eisenberg dated October 9, 1987

J-7 Transcript of Sworn Interview of Matthew Sziegrenuk and James R.Swan, dated October 8, 1987

J-8 Transcript of Sworn Interview of Robert James, dated November 29, 1987

J-9 Transcript of Sworn Interview of Robert James, dated November 29, 1987

J-10 Tropicana credit and collection files for Keum Lee

J-11 Record of $5,000 Cash Paid Out dated April 3, 1987, paid to Kyung Hui Paik

J-12 Stipulation of facts

J-13 Stipulation of Settlement, dated September 5, 1989

For the Petitioner:

P-1 Division of Gaming Enforcement Investigation Report, dated November 20, 1987, re: Harry Kim

For the Respondent:

R-1FID (not in evidence) Atlantic City Press Newspaper Article

WITNESSES

For the Petitioner:

John Lee, former vice-president of oriental marketing at the Tropicana Hotel and Casino

Agent Judy Stephenson, Division of Gaming Enforcement

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Sharon Eisenberg, former director of casino credit at the Tropicana Hotel and Casino

For the Respondent:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 761-88
OAL DOCKET NO. ON REMAND CCC 898-89
AGENCY REF. NO. 88-157

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, vs. ADAMAR OF NEW JERSEY, INC., t/a TROPICANA HOTEL AND CASINO and ROBERT JAMES, Respondents.	Civil Action STIPULATION OF SETTLEMENT

With the above-captioned matter having been discussed by and between the parties involved, Peter N. Perretti, Jr., Attorney

General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Barth F. Aaron, Deputy Attorney General, and Mark H. Sandson, Esq., of Hankin, Sandson and Sandman, Attorneys for Adamar of New Jersey, Inc. t/a Tropicana Hotel and Casino and Robert James, Respondents, set forth below are the matters that have been agreed upon and stipulated to:

1. WHEREAS, Adamar of New Jersey, Inc. (hereinafter "Adamar") at all times relevant hereto, was and is a corporation organized and existing under the laws of the State of New Jersey having as a purpose the operation of a licensed casino gaming establishment and Adamar, at all times relevant hereto, was and is the holder of a plenary casino license issued to it by the Casino Control Commission (hereinafter "Commission"), authorizing it to operate a casino hotel in accordance with the Casino Control Act (hereinafter "Act"), and Commission regulations, said plenary license having been issued to Adamar effective November 26, 1982 and Adamar having conducted its casino hotel operation pursuant to said plenary license continually to the present date at its principal place of business known as the Tropicana Hotel and Casino located at Iowa Avenue and the Boardwalk in the City of Atlantic City, County of Atlantic, State of New Jersey, and

2. WHEREAS, Adamar is the holder of, and operates pursuant to, an Operation Certificate effective November 26, 1981, which Operation Certificate entitles Adamar to operate a casino hotel in

accordance with the provisions of the Act and the regulations promulgated thereunder, and

3. WHEREAS, Robert James, at the times relevant hereto, was the holder of a casino key employee license #62-11 and was, until November 23, 1987, the Senior Vice President of Casino Operations of Adamar having supervisory responsibilities over all Vice Presidents and Directors of Adamar responsible for casino games, slots, credit and marketing, and

4. WHEREAS, Harry K. Kim of Old Westbury, New York, was a premium player of Adamar having established a credit account on March 22, 1986 which credit account limit between March 22, 1986 and December 8, 1986 was permanently increased eight times and increased TTO (this trip only) six times and which credit account reached a maximum limit during that period of $1,410,000, and

5. WHEREAS, on December 26, 1986, Harry K. Kim presented to Adamar his personal check in the amount of $517,000 in consolidation of three previously issued counter checks of the casino which personal check was deposited by the casino in its account with its commercial bank on January 1, 1987, and on January 2, 1987, Adamar was informed by Mr. Kim's bank by telephone that the personal check would not clear and, on January 15, 1987, the said personal check of Harry K. Kim was returned unpaid by Mr. Kim's bank to Adamar and, because of the returned check of Mr. Kim, on January 15, 1987, the credit account of Harry K. Kim was suspended by Adamar and remains suspended to the present time, and

6. **WHEREAS**, on March 7, 1987, Young N. Kang of Bayside, New York, established a credit account with Adamar with a limit of $100,000 and, also, withdrew the sum of $90,000 front money deposit which had previously been placed with the casino's cage as well as drawing two counter checks in the amount of $10,000 and $90,000, and

7. **WHEREAS**, $100,000 in value of gaming chips obtained from Adamar in exchange for the counter checks and front money withdrawals of Mr. Kang were transferred by Mr. Kang to Harry K. Kim at the gaming tables of Adamar for Harry K. Kim's use at the gaming tables of Adamar, and

8. **WHEREAS**, on July 19, 1986, Keum Y. Shin of New York, New York renewed an application for a credit account with Adamar and was granted an approved credit limit of $20,000 on that date which credit account limit was increased to a total of $200,000 on March 7, 1987 and again increased to $350,000 on March 27, 1987, and

9. **WHEREAS**, on March 7, 1987, Keum Y. Shin issued a series of counter checks payable to Adamar in the total amount of $250,000 in exchange for which she received gaming chips from Adamar and $220,000 in value of said gaming chips were transferred by Keum Y. Shin to Harry K. Kim for the use of Mr. Kim at the gaming tables of Adamar and on March 27, 1987, Keum Y. Shin issued a series of counter checks drawn upon her credit account with Adamar in the total amount of $320,000 and exchanged said counter checks for gaming chips of Adamar which gaming chips were transferred by Ms.

Shin to Harry K. Kim for the use of Harry K. Kim at the gaming tables of Adamar, and

10. WHEREAS, on February 7, 1987, Adamar established a credit account in the name of Keum Hong Lee of Bogota, New Jersey with a credit limit in the amount of $50,000 which credit limit was increased to $100,000 on February 11, 1987, and

11. WHEREAS, on March 7, 1987, Keum Hong Lee issued a total of six counter checks drawn on his credit account with Adamar in the total amount of $125,000, which did not exceed his credit limit due to repayments being made during that day and, on March 8, 1987, Keum Hong Lee issued a total of three counter checks drawn on his credit account with Adamar in the total amount of $100,000, which also did not exceed his credit limit due to repayments from the previous day, and, in exchange for said counter checks, Keum Hong Lee received gaming chips of Adamar of which gaming chips $50,000 in value of gaming chips was transferred by Keum Hong Lee to Harry K. Kim for Harry K. Kim's use at the gaming tables of Adamar, and

12. WHEREAS, on April 3, 1987, Adamar established a credit account in the name of Kyung Hui Paik of New York, New York with an approved limit of $100,000, and

13. WHEREAS, on April 3, 1987, Kyung Hui Paik was issued a counter check drawn on her credit account in the amount of $100,000 and obtained gaming chips in exchange therefore. The gaming chips were transferred to Harry K. Kim by Kyung Hui Paik in the presence of Robert James for Harry K. Kim's use at the gaming tables of Adamar, and

14. **WHEREAS**, all of the chip transfers identified in paragraphs 7, 9, 11 and 13 of this Stipulation, supra, occurred while the credit privileges of Harry K. Kim with Adamar were suspended. At the time of Robert James' observation on April 3, 1987, as described in paragraph 13 of this Stipulation, supra, Robert James was aware that Harry K. Kim was gaming with Ms. Paik's chips with knowledge that the credit privileges of Harry K. Kim had been previously suspended and not reinstated, and

15. **WHEREAS**, Harry K. Kim engaged in gaming activities as a player at Adamar utilizing the gaming chips obtained from the credit accounts of other persons as identified in paragraphs 7, 9, 11 and 13 of this Stipulation, supra, and

16. **WHEREAS**, on April 3, 1987, Adamar gave to Kyung Hui Paik a "cash paid out" in the amount of $5,000 which was noted as "Misc. Customer Good Will" and which has been explained by Adamar in its Answers to Interrogatories as "made for the purpose of assuring the good will of a patron who had just lost $100,000 at the Tropicana" notwithstanding that the player rating records of Adamar revealed no gaming activity by Ms. Paik, and

17. **WHEREAS**, at the time of the issuance of the "cash paid out" described in paragraph 16 of the Stipulation, supra, Respondents Adamar and Robert James knew that the patron who had lost the money was Harry Kim and the $5,000 cash paid out was turned over to Harry Kim by Ms. Paik upon her receiving same from the cashier's cage of the casino, and

18. WHEREAS, subsequent to the chip transfers identified in paragraphs 7, 9, 11 and 13 of this Stipulation, supra, Adamar conducted its own internal investigation of the circumstances regarding certain credit patrons apparently utilizing their credit accounts without gaming at the Tropicana, which investigation revealed and confirmed that the monies obtained through the issuance of credit as set forth above were being utilized for gaming purposes by Harry K. Kim. Specifically, the documentation prepared to record and memorialize Adamar's internal investigation revealed the following:

a) by memorandum of April 7, 1987, John Copriviza, Casino Cage Manager/Assistant Casino Controller, advised Lester Brzozowski, Vice President of Finance, that, on April 3, 1987, a "$5,000 paid-out" was paid to Ms. Paik. Mr. Copriviza further advised Mr. Brzozowski that Ms. Paik's player rating documentation reflected no gaming activity. This information raised a concern as to whether Ms. Paik had "walked with the chips." Exhibit A annexed hereto.

b) Lester Brzozowski, Vice President of Finance, brought the above information to the attention of John M. Gallaway, President and General Manager, and an internal investigation was commenced. The internal investigation focused on the potential that "chips had walked" from the casino, i.e., that patrons had obtained chips by issuing counter checks from lines of credit and cashing those chips without playing at the casino, thereby obtaining an interest-

free loan. By memo dated April 21, 1987, Lester Brzozowski prepared a preliminary evaluation of "the pattern of betting behavior/chip transfers to Mr. Kim." Exhibit J-5-W as marked at the hearing and annexed hereto.

c) by memo dated April 22, 1987, John M. Gallaway, President and General Manager, directed Robert James and Lester Brzozowski to prepare a joint report with their conclusions regarding the "credit issuance" investigation relative to Harry Kim and various other Oriental players. Exhibit J-5-V as marked at the hearing and annexed hereto.

d) by memo dated April 28, 1987, Leanor A. Mazzeo, Casino Collections Manager, reported to Lester Brzozowski the details of her research into the potential "chip walking" of various Oriental players, which revealed that there was no "chip walking" but that Harry Kim had gambled with the chips obtained through the issuance of credit to others. Exhibit J-5-Z as marked at the hearing and annexed hereto.

e) Adamar's internal investigation into "chip walking" confirmed that "chip walking" had not occurred but that Harry K. Kim had played with chips obtained from the issuance of credit to, and the taking of counter checks by, other Oriental patrons. Exhibit J-5-Z as marked at the hearing and annexed hereto.

f) the details of the relationships of Harry K. Kim with the other Oriental patrons was revealed as Adamar's

internal investigation continued. Exhibit J-5-Z as marked at the hearing and annexed hereto.

g) that Harry K. Kim had essentially been extended credit by the extension of credit to the other Oriental patrons was finally confirmed by the memo of John Lee, dated May 7, 1987, which revealed that Harry K. Kim acknowledged liability to the casino for the credit debts of the other patrons. Exhibit J-5-AA as marked at the hearing and annexed hereto.

h) the activities of Harry K. Kim and the other casino patrons were summarized in a joint report, as requested by John M. Gallaway, and provided to Mr. Gallaway by memorandum of May 12, 1987, from Lester Brzozowski and Robert James. Exhibit J-5-BB as marked at the hearing and annexed hereto, and

19. WHEREAS, the memoranda and reports of the Tropicana of its internal investigation as described in paragraph 18 of this Stipulation, supra, were provided to the Division of Gaming Enforcement (hereinafter "Division") by officials of Adamar to advise the Division of the situation, and

20. WHEREAS, the Division conducted its own investigation of the gaming activities of the persons identified at the Tropicana which investigation confirmed the "passing of chips" from certain credit patrons of the Tropicana to Harry K. Kim while the credit privileges of Harry K. Kim were suspended and identified a lack of oversight by casino personnel of these activities, the effect of

which activities was to allow Harry K. Kim, whose credit privileges had been suspended, to continue to gamble at Tropicana utilizing credit issued to other persons, and

21. WHEREAS, at the hearing before the Office of Administrative Law held in this matter, described below, John Lee, who at the time of the happening of the events which were investigated and give rise to the Complaint in this matter was Vice President of Oriental Marketing for the Tropicana, testified that, although it was common knowledge amongst the employees of the Tropicana that Harry Kim would gamble with gaming chips obtained from other patrons, (Tr 9/14/89 67:3) neither John Lee nor Robert James had direct knowledge or were ever informed by Harry Kim that the credit being issued by Tropicana to the credit applicants identified in paragraphs 6, 8, 10 and 12 of this Stipulation, supra, was for the sole purpose of allowing Harry Kim to continue to gamble on credit at the Tropicana while his credit privileges had been suspended. (Tr 9/14/89 72:20, 94-25). This testimony was in direct contravention to the testimony of John Lee at a sworn interview conducted by the Division on October 9, 1987 during the Division's investigation of this matter. (Tr Sworn Interview 10/9/87 48:16 et seq.) Based in part upon the irreconcilable contradictions in the testimony of John Lee during these proceedings, the Division filed an objection to the renewal of the casino key employee licensure of John Lee, which renewal was denied by the Commission; and

22. **WHEREAS**, John Lee is presently beyond the jurisdiction of the Commission since the denial of his license renewal application and he is presently a resident of, and employed in, South Korea, and

23. WHEREAS, Robert James has failed to renew his casino key employee licensure and has allowed same to expire and is no longer employed in the casino industry in New Jersey. Upon representation of his counsel, Mr. James has indicated that he does not intend to return to New Jersey to work in the casino industry, and

24. WHEREAS, from the evidence presented at the hearing before the Office of Administrative Law and from the information gathered through its own internal investigation of the matter, which includes the testimony of Sharon Altman Eisenberg, who testified that on April 3, 1987 Harry Kim, Kyung Hui Paik, Sharon Altman Eisenberg and Robert James had dinner together at the Tropicana (Tr 9/14/88 125:10) and, upon finishing the meal, Sharon Altman Eisenberg and Ms. Paik completed the credit application of Ms. Paik (128:19) and thence Sharon Altman Eisenberg observed Harry Kim at a gaming table playing with the gaming chips obtained from the issuance of a counter check to Ms. Paik in the presence of Robert James (129:24 et seq.) and John Lee's testimony that it was well known to the employees of the casino that Harry Kim would gamble with gaming chips obtained from other patrons and the player rating records and other records of the casino and observations by the casino employees of Harry Kim and the gaming patrons referred to herein and the memoranda and advices provided by John Lee that

Harry Kim would be responsible for the credit debts of, inter alia, the four credit patrons identified herein, Respondent, Adamar of New Jersey, Inc., acknowledges that it should have known that the issuance of credit to Kyung Hui Paik on April 3, 1987, and to the other patrons referred to herein, was for the purpose of enabling and allowing Harry Kim to gamble on credit while his credit privileges had been suspended, and

25. WHEREAS, Respondents Adamar and Robert James acknowledge that Mr. James failed to properly supervise and oversee the issuance of credit and the operations of the casino for which he was responsible, which negligence resulted in the casino issuing credit to the four patrons whose purpose was to allow Harry Kim to gamble on credit while his credit privileges were suspended, and

26. WHEREAS, on December 7, 1987, the Division filed with the Commission the complaint in this matter and, subsequently, the matter being determined to be a "contested case" and being transmitted to the Office of Administrative Law and, thereafter, a hearing commenced on September 14, 1988 before the Honorable Steven Carnes, A.L.J., and the Judge having received into evidence certain exhibits and having heard the testimony of certain witnesses and, on September 15, 1988, during the pendency of the hearing, the parties, through counsel, having conferred and reached a proposed resolution of the matter, and

27. WHEREAS, on January 18, 1989, the Commission voted to reject the proposed Stipulation of Settlement of the parties and to remand the matter to the Office of Administrative Law for further

proceedings and, on April 24, 1989, the parties, through their attorneys, conferred with the Hon. Steven L. Carnes, A.L.J., and having reached a proposed resolution of the matter, and

28. WHEREAS, N.J.S.A. 5:12-101(a) provides that:

> Except as otherwise provided in this section, no casino licensee or any person licensed under the act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, shall:
>
> (1) Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activity as a player; or
>
> (2) Release or discharge any debt, either whole or in part, or make any loan which represents any losses incurred by any player in gaming activity, without maintaining a written record thereof in accordance with the rules of the commission.

Thus, the Act prohibits any extension of credit for gaming purposes by licensed entities or persons unless, inter alia, the requirements of N.J.S.A. 5:12-101(b) are complied with and non-compliance with the requirements of N.J.S.A. 5:12-101(b) is, ipso facto, a violation of N.J.S.A. 5:12-101(a), and

29. WHEREAS, N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(b) provide that checks can be accepted by a casino licensee to enable a person to take part in gaming activity as a player upon certain conditions, inter alia, that there is compliance with all credit regulations, including that the credit privileges of the patron not be suspended, and

30. WHEREAS, Respondent, Adamar of New Jersey, Inc., acknowledges that it violated the provisions of N.J.S.A. 5:12-101(b) and, therefore, N.J.S.A. 5:12-101(a) and N.J.A.C. 19:45-

1.25(b) and 1.27(j) by accepting the counter checks of Kyung Hui Paik and the other patrons referred to herein under circumstances that Adamar should have known that Harry Kim was thereby enabled to take part in gaming activity as a player upon credit while his credit privileges were suspended, and

31. WHEREAS, N.J.A.C. 19:45-1.2(c) requires that a casino licensee maintain records of the providing of complimentary services or items including "the name of each person provided with complimentary services", and

32. WHEREAS, Respondents, Adamar and Robert James, maintained and caused to be maintained by this casino licensee inaccurate records of the providing of complimentary services or items in violation of N.J.A.C. 19:45-1.2(c) in that the records of the $5,000 cash paid out to Harry Kim on April 3, 1987, identified Kyung Hui Paik as the recipient of the complimentary, and

33. WHEREAS, this being the agreement of the parties and the parties hereby request the Commission to accept and approve this Stipulation of Settlement;

NOW, THEREFORE, BE IT STIPULATED AND AGREED by and between the parties hereto that the factual statements set forth in the Preamble hereto are accurate and admitted by the parties, and

THAT, Adamar and Robert James violated the provisions of N.J.S.A. 5:12-101(b), N.J.S.A. 5:12-101(a), N.J.A.C. 19:41-1.25(b) and 1.27(j) by accepting the counter checks from Kyung Hui Paik and the other patrons referred to herein thereby enabling Harry Kim to participate in gaming activities as a credit player

while his credit privileges were suspended pursuant to N.J.A.C. 19:45-1.27(j) and the Respondents Adamar and Robert James, under the circumstances, should have known that Harry Kim was thereby enabled to participate in gaming as a credit player while his credit privileges were suspended pursuant to N.J.A.C. 19:45-1.27(j), and

THAT, Adamar and Robert James violated the provisions of N.J.A.C. 19:45-1.2(c) by issuing a complimentary service or item, to wit $5,000 cash, to Harry Kim while maintaining records of that complimentary service or item which identified Kyung Hui Paik as the recipient thereof, and

THAT, the parties hereto agree and recommend to the Commission that a civil penalty in the amount of $25,000 be imposed on Adamar of New Jersey, Inc. for its violations of N.J.S.A. 5:12-101(a) and (b) and N.J.A.C. 19:45-1.25(b) and 1.27(j) and a civil penalty in the amount of $15,000 be imposed on Adamar of New Jersey, Inc. for its violation of N.J.A.C. 19:45-1.2(c) and the Commission issue a letter of reprimand to Robert James to be placed in his permanent license file for his violations of N.J.S.A. 5:12-101(a) and (b) and N.J.A.C. 19:45-1.25(b), 19:45-1.27(j) and 19:45-1.2(c).

DIVISION OF GAMING ENFORCEMENT

By_____
Barth F. Aaron, D.A.G.
Attorney for Complainant
State of New Jersey
Department of Law & Public Safety
Division of Gaming Enforcement

ADAMAR OF NEW JERSEY, INC.
AND ROBERT JAMES

By_____
Mark H. Sandson, Esq.
Hankin, Sandson & Sandman, Esqs.
Attorneys for Respondents
30 South New York Avenue
Atlantic City, New Jersey 08401

Dated: September 5, 1989

42589/1.1kpu

TROPICANA

A RAMADA HOTEL AND CASINO

EXHIBIT A

DATE April 7, 1987

TO Lester Brzozowski, Vice President of Finance

FROM John Copriviza, Casino Cage Manager/Assistant Casino Controller

SUBJECT Paid-Out Review

No discrepancies noted for the period of March 24, 1987 thru April 3, 1987.

Additional Note:

$5,000 Paid-Out 4/3/87, Paik Kyun Hui, Goodwill.

$100,000 Line, 1 marker taken for $100,000.

CC: Ron Alcorn, Casino Controller
Sam Nonclerg, Assistant Cage Manager

TROPICANA
A RAMADA HOTEL AND CASINO

DATE April 20, 1987

TO Lester Brzozowski, Vice President of Finance

FROM Leanor A. Mazzeo, Collection Manager

SUBJECT KOREAN PLAYERS

Per our discussion of this date below listed in the information you requested on the seven individuals for the time period 12/01/86 thru 4/15/87.

Player A:

Patron Name:	Hee Man Lee	-Bank Account Balance at issuance:
Account #:	145752	Checking L5
Beginning Balance:	$100,000.00	Savings H5
Counter Checks Issued:	$200,000.00	
Front Money Deposits:	-0-	
Cash Play:	$6,900.00	Asset Balance represented by
Chip Play:	$241,200.00	customer: Income: $100,000/yr.
Payments:	$100,000.00	Home: $200,000
Win/(Loss):	($91,300.00)	Home Mortgage: $10 00
Potential Walk:	$8,700.00	
Current Account Balance:	$200,000.00	
Credit Executive Who Issued Credit Line:		P. Perry and R. James
Complimentaries: Hard -	$35,270.63	
Soft -	$757.94	

Player B:

Patron Name:	Harry Kim	-Bank Account Balance at
Account #:	142183	issuance:
Beginning Balance:	$1,340,000.00	Checking L6; 7/18/86
Counter Checks Issued:	-0-	
Front Money Deposits:	-0-	Asset Balance represented by
Cash Play:	$49,800.00	customer: Income & Assets:
Chip Play:	$786,900.00	$2,000,000
Payments:	**-0-	Home Mortgage: $100,0C
Win/(Loss):	($553,500.00)	
Potential Walk:	*$283,200.00	
Current Account Balance:	$1,340,000.00	
Credit Executive Who Issued Credit Line:		J. Gallaway, R. James, J. Bohr
Complimentaries: Hard -	$34,149.45	
Soft -	$4,619.58	

*This balance could have been applied to his outstanding balance.

**Note: During this time period there was a $190,000 payment which was applied to a previous payment.

INTEROFFICE MEMORANDUM

Player C:

Patron Name:	Young N. Kang	-Bank Account Balance at
Account #:	522550	issuance: H5 (Telephone
Beginning Balance:	-0-	Verification)
Counter Checks Issued:	$200,000.00	Confirmed by Letter:
Front Money Deposits:	-0-	Checking: H4
Cash Play:	$5,000.00	Savings: L4
Chip Play:	-0-	
Payments:	$100.000.00	Asset Balance represented by
Win/(Loss):	($1,000.00)	customer: Income: $250,000/yr.
Potential Walk:	$99,000.00	Net Worth: $500,000
Current Account Balance:	$100,000.00	Indebtness: -0-
Credit Executive Who Issued Credit Line:		S. Altman, & M. Dziegrenuk
Complimentaries: Hard -	$5,211.51	
Soft -	$306.80	

Note: Front Money Deposits amounted to $90,000 during this time period.

Player D:

Patron Name:	Keum Y. Shin	-Bank Account Balance at
Account #:	308487	issuance: L5
Beginning Balance:	$35,000.00	
Counter Checks Issued:	$811,000.00	Asset Balance represented by
Front Money Deposits:	-0-	customer: Income: $100,000 7/
Cash Play:	$74,400.00	Townhouse: $300,000
Chip Play:	$51,700.00	Income Revised: $25(
Payments:	$496,000.00	3/
Win/(Loss):	($33,300.00)	
Potential Walk:	$281,700.00	
Current Account Balance:	$350,000.00	
Credit Executive Who Issued Credit Line:		M. Dziegrenuk & R. James
Complimentaries: Hard -	$23,033.99	
Soft -	$6,444.43	

Player E:

Patron Name:	Keum Hong Lee	-Bank Account Balance at
Account #:	542353	issuance: No Bank Account whe
Beginning Balance:	-0-	Credit Line Approve
Counter Checks Issued:	$360,000.00	on 2/8/87.
Front Money Deposits:	-0-	
Cash Play:	$5,325.00	Asset Balance represented by
Chip Play:	$25,400.00	customer: Income: $150,000/yr
Payments:	$280,000.00	Net Worth: $7,000,(
Win/(Loss):	$64,675.00	Mortgage: $400,000
Potential Walk:	$144,675.00	
Current Account Balance:	$80,000.00	
Credit Executive Who Issued Credit Line:		S. Altman
Complimentaries: Hard -	$25,306.09	
Soft -	$3,283.04	

Player F:

Patron Name:	Kyung Hui Paik	-Bank Account Balance at	
Account #:	282543	issuance:	
Beginning Balance:	-0-		Checking L4
Counter Checks Issued:	$100,000.00		Business L4
Front Money Deposits:	-0-		
Cash Play:	$1,500.00	Asset Balance represented by	
Chip Play:	$500.00	customer:	Income: $150,000/yr.
Payments:	-0-		Assets: $500,000
Win/(Loss):	$2,100.00		
Potential Walk:	$100,000.00		
Current Account Balance:	$100,000.00		
Credit Executive Who Issued Credit Line:	J. Swan & S. Altman		
Complimentaries: Hard -	$5,638.60		
Soft -	$312.76		

Potential Walk is calculated by the following formula:

Add: Counter Check Issued	xxx
Subtract: Payments	(xxx)
Equals: Balance	xxx
Add/Subtract: Win/(Loss)	xxx
*Equals Potential Walk	xxx

*(To Maximum of Counter Checks Issued)

In addition to gathering the above information we are also conducting complete Asset Searches as you requested. Once the Asset Searches are completed I shall submit to you all pertinent information for your review

As always if you should have any questions please do not hesitate to contact me.

TROPICANA
A RAMADA HOTEL AND CASINO

DATE April 21, 1987

TO Jack Gallaway, Steve Bolson, Robert James

FROM Lester Brzozowski LB

SUBJECT CREDIT ISSUANCE

Per our meeting on Friday April 17th, I am including firmed up data on the following players:

Hee Man Lee
Harry Kim
Young N. Kang
Keum Y. Shin
Keum Hong Lee
Kyung Hui Paik

I have also included a per trip chart of what appears to be the pattern of betting behavior chip transfers to Mr. Kim. Please note the following potentia walk data:

		POTENTIAL WALK $	
Hee Man Lee		$8,700	
Harry Kim		283,200	
Young N. Kang		100 ~~99~~,000 - HK?	
Keum Y. Shin		300 251,700	
Keum Hong Lee		144,675	80 - HK
Kyung Hui Paik	HK	- 100,000	
		$917,275.	

We are currently performing asset checks on all of the above individuals.

LB:sz
xc: P. Rubeli
J. Perry

Attachments

H. M. Lee [A]

	1/2	1/3	1/4	1/5
Counter Checks	60,000	90,000	50,000	--
Chip Play	1,500	91,500	148,200	
Win/(Loss)	22,500	(1,900)	(111,900)	
Payment	(100,000)			

WALK? = $8,700

H. Kim [B]

	1/2	1/3	1/4	1/5
Counter Checks	--			
Chip Play	49,600 <-	--	--	--
Win/(Loss)	(49,600)			

WALK? = $ -0-

Kyung Hu Paik [F]

	4/3/87
Counter Checks	100,000
Chip Play	-0-
Win(Loss)	-0-
Cage Payout	$5,000

WALK? = $100,000

H. Kim [B]

	4/3	4/4
Counter Checks	--	--
Chip Play	-->96,300	--
Cash Play	2,500	9,900
Win/(Loss)	(98,500)	(9,500)

WALK? = $700

TROPICANA®

A RAMADA HOTEL AND CASINO

DATE April 22, 1987

TO Bob James & Lester Brzozowski

FROM John M. Gallaway

SUBJECT **CREDIT ISSUANCE**

In our meeting held today with the three of us and Steve Bolson, it appears that the conclusion we came to in last Friday's meeting (4/17) was substantiated regarding the play of various Oriental player which confirms that effectively a great deal of our credit monies did not walk but was played and lost by Harry Kim.

Lester's memo implied that $917,275 walked which, as mentioned, apparently, did not happen although our rating system gives that appearance.

So that our records are clarified and in order, would the two of you please make up a joint report summarizing your conclusions and the information not shown on the rating system which leads you to the conclusions we discussed that, in effect, no significant monies walked from the Tropicana during these transactions.

It is extremely important that you do this as quickly as possible to insure our records are accurate.

JMG:JP
Attachment: 1

cc: S. Bolson

INTEROFFICE MEMORANDUM

TROPICANA®

A RAMADA HOTEL AND CASINO

DATE: April 28, 1987

TO: Lester Brzozowski, Vice President of Finance

FROM: Leanor A. Mazzeo, Casino Collections Manager

SUBJECT: **KOREAN PLAYERS: MEETING WITH S. ALTMAN**

On April 27, 1987 I met with S. Altman, Director of Casino Credit at your request to discuss the items in my memo dated April 20, 1987. The following are her comments regarding each player:

Patron A: Hee Man Lee

Ms. Altman stated it was coincidence that the patron (Lee) and Mr. Kim were in the same day, these two patrons do not know each other. In reality Mr. Lee gave his chips to Mr. Dong Hyok Joo (#320129). When reviewing the ratings for this patron during the time period 1/3/87 the individual only had $2,000. chip play.

Patron B: Harry Kim

It was noted during our discussion that the majority of Mr. H. Kim's potential walk ($220,000) was given to Keum Y. Shim for her to make a payment. But this $220,000 was already factored into the calculation for Ms. Shin's walk, therefore, if we reduce Harry Kim's potential walk we would have to increase Mr. Shin's walk to $501,700. It was also noted that Ms. Altman stated that Mr. H. Kim's chip play was inflated.

Patron C: Young N. Kang

Ms. Altman stated that she agreed to the information reported and that the patron drew the counter checks in the amount of $100,000. and remitted the chips to Mr. Harry Kim.

Patron D: Keum Y. Shin

Ms. Altman stated that a portion of the potential walk factor which accounting calculated ($281,700), $220,000 was remitted to Harry Kim and $50,000 was remitted to Mr. Sung Woon Eun. Ms. Altman also stated that the patrons Win/(Loss) as evidenced in the player rating system is under stated. On 3/7/87 Mr. Sung Woon Eun (#327698) had both cash and chip play of $18,700.

INTEROFFICE MEMORANDUM

Patron E: Keum Hong Lee

Through discussion it was learned that $50,000. was given to Mr. H. Kim and an additional $50,000 was taken to Trop West for gaming usuage.

Patron F: Kyung Hui Paik

Through discussion it was agreed that the entire $100,000. in counter checks drawn by the patron (Paik) was remitted to Harry Kim.

TROPICANA
A RAMADA HOTEL AND CASINO

Tuesday

DATE May 7, 1987

TO Distribution

FROM John Lee, Executive Vice President Marketing/Orient*

SUBJECT CASINO CREDIT

October 1986 a meeting took place between Bob James and myself to discuss my goals for 1987. It was decided my department would produce 17 million from November 1986 through December 1987. As you know, from November through April, I achieved 4.5 million towards my 1987 goal.

Certain individuals have raised questions regarding a large "walk" factor on the account of Mr. Harry Kim of which I am in total disagreement. I will however, provide a payment schedule for Mr. Kim's outstanding balance. Mr. Kim presently owes $100,000 on Mr. Young Kang's account, $100,000 on Mrs. Kyung Paik's account, $220,000 on Mrs. Keum Yul Shin's account and $50,000 on Mr. Keum Hong Lee's account. Mr. Kim will pay the total of $470,000 on these accounts by the end of August 1987. The balance of $1,340,000 owed on Mr. Kim's account will be paid by the end of this year. Once paid, Mr. Kim's available credit will be reduced to zero.

Mr. Dong Lee presently owes the Tropicana $1,524,500 and proposes to pay $500,000 by the end of August 1987, with the balance of $1,024,500 paid by the end of this year. Once paid, Mr. Lee's available credit will be reduced to zero.

On the account of Mr. Don Y. Lee, legal proceedings have begun to collect on his balance of $550,000.

Besides the above mentioned accounts, the available credit will be reduced to zero on 12 additional credit players as they pay on their balance owed and I am not looking to establish any new credit accounts for the year 1987. The following patrons represent $1,935,000 in credit dollars:

Hee Man Lee (Paik)	$300,000
Keum Hong Lee	$100,000
Andrew Lee	$33,000
Sung Woon Eun	$160,000
Meng Saetia	$50,000
Baek Hee Kim	$100,000
Young N. Kang	$100,000
Keum Yul Shin	$360,000

Dates have changed since John Lee meeting with J. Gal

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INTEROFFICE MEMORANDUM

VAGUELANDIA

A RAMADA HOTEL AND CASINO

DATE May 7, 1987

TO Distribution

FROM John Lee, Executive Vice President Marketing/Orient*

SUBJECT CASINO CREDIT Page 2

Steve Hong	$97,000
Peter Kim	$15,000
Slim Chun	$500,000
Sang Ik Park	$120,000

In light of the present circumstances, it will be necessary to adjust my goals for 1987.

Thank you.

Distribution:

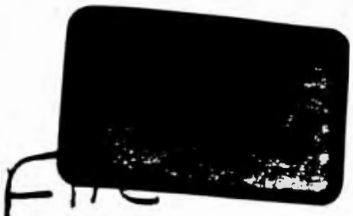
Jack Gallaway
Bob James
Lester Brzozowski
Sharon Altman

*Pending CCC approval

INTEROFFICE MEMORANDUM

TROPICANA®

A RAMADA HOTEL AND CASINO



File
J Lee

DATE May 12, 1987

TO Jack Gallaway

FROM Lester Brzozowski and Bob James

SUBJECT CREDIT ISSUANCE

Per your memo dated April 22, 1987, this memo will serve as clarification on credit transactions including Harry Kim and other related players during the December thru April 1987 periods.

With regard to credit issuance to K. Shin, Keum Yul Shin, Keum Hong Lee, Young Kang and K. Paik, the following transactions occurred on days when Harry Kim was also playing at Tropicana. The transactions listed reflect only those trips when the above players and Harry Kim were here simultaneously.

On December 26, 1986, $20,000 in Counter Checks were issued to K. Shin. Of this $20,000, a total of $18,500 in chips were transferred to Harry Kim. There is no walk associated with this transaction.

On January 2, 1987, $50,000 in Counter Checks were issued to K. Shin. Of this $50,000, a total of $49,600 in chips was transferred to Harry Kim. There was no walk associated with this transaction.

On March 7 & 8, 1987, $650,000 in Markers were issued to Keum Yul Shin, Keum Hong Lee and Young Kang. However, these three individuals made payments throughout the two day period and after a detailed analysis by Lynn and Sharon, $248,000 in chips were actually available to play. This $248,000 plus $75,000 in cash deposits was transferred to Harry Kim. Recorded losses per player rati for Harry Kim amounted to $266,800. This results in a balance of $56,200. Of this amount $30,000 was used to pre-pay markers in Keum Yul Shin's account. After this occurred, Shin lost $7,100; Lee won $11,000; Kang lost $1,000 and $20,000 was transferred from Trop West (two days later) for payment at Trop Eas The total potential walk for this group on the above dates was $9,100.

On March 27 & 28, 1987, $320,000 in Counter Checks were issued to K. Shin. Of this amount, $220,000 was transferred several times between K. Shin and Harry K This chip transfer resulted in a overstatement of chip play in our rating syste The net transaction on the above two days indicates that the $100,000 in credit (chips) was transferred to Harry Kim. The potential walk was $2,000.

On April 3 & 4, 1987, K. Paik was issued $100,000 in Counter Checks and given a $5,000 Cage Payout for this transaction. Harry Kim received $96,300 of this credit/chips. There was no walk related to these transactions.

INTEROFFICE MEMORANDUM

In summary, chips were being transferred from various players to Harry Kim while at the same time, Harry Kim's account (owed $1,340,000) was suspended. The total walk for the above transaction was $11,100. I should also note that K. Shin owes $356,500; Keum Hong Lee owes $60,000; Young Kong owes $100,000 and K. Paik owes $100,000. The total amount owed for this group is $1,956,500.

We would like to propose that the Credit Committee Agenda be expanded to include discussions on new credit lines established over $50,000, and player ratings of accounts over $50,000 with activity in the two weeks prior to the Credit Committee meetings.

LB:sz
xc: [redacted]
J. Perry
S. Bolson

K. Shin

Counter checks	$20,000
Cash play	$8,100
Chip play	$1,200
Win/Loss	($10,200)

Harry Kim

Cash play	$10,800
Chip play	$18,500
Win/Loss	($29,300)

Potential walk Ø

K. Shin

Counter checks	$50,000
Cash play	$200
Chip play	$6,500
Win/Loss	($2,600)

Harry Kim

Chip play	$49,600
Win/Loss	($49,600)

Potential walk Ø

TRIP March 7-8, 87

	Keum Yul Shin	Keum Hong Lee	Young Kang
Balance on arvl.	$157,000	-$15,000*	ø
Markers	$250,000	$200,000	$200,000
Payments	$167,000	$135,000	$100,000
Chips avail. to play	$83,000	$65,000	$100,000
Balance on departure	$240,000	$85,000	$100,000

$248,000	Chips available to play (Shin, Lee, Kang)
($15,000)	CD Keum Lee had before Harry's play
$233,000	Chips left to play after CD backed out
$90,000	CD Kang gave to Harry
$323,000	Chips and cash in play
($266,800)	Harry Kim's losses
$56,200	Balance
($30,000)	Prepayment Shin's account
$26,200	Balance
($7,100)	Shin's losses
$19,100	Balance
$11,000	Lee's wins
$30,100	Balance
($1,000)	Kang's losses
$29,100	Balance
($20,000)	Lee payment at Trop. West for Trop. East
$9,100	Walk for group

Note to reader - the above patrons should be considered one patron's play due to the complexity of the trip transactions.

*CD on deposit prior to play

K. Shin

Counter checks	$320,000
Cash play	$10,000
Chip play	$1,100
Payments	$220,000
Win/Loss	$1,500

Harry Kim

Cash play	$10,000
Chip play	$213,500
Win/Loss	($99,500)

Potential walk $2,000

K. Paik

Counter checks	$100,000
Win/Loss	Ø

Harry Kim

Cash play	$12,400
Chip play	$96,300
Win/Loss	($108,300)

Potential walk Ø

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-261
APPLICATION NO. 73795-21
OAL DOCKET NO. CCC 00932-89
ORDER NO. 90-18-8

APPLICATION OF VALERIE D. ALLEN
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 May 2, 1990,

IT IS on this 9th day of May 1990, ORDERED that the initial decision is rejected for the reasons stated on the record at the public meeting; and

IT IS FURTHER ORDERED that the application is granted.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 932-89

AGENCY DKT. NO. 89-EA-261

VALERIE D. ALLEN,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Valerie D. Allen, petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: January 4, 1990 Decided: March 28, 1990

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

STATEMENT OF THE CASE

This matter concerns the application of the petitioner for licensure as a casino employee, which would permit her employment in a licensed casino as a teller. By letter report to the Casino Control Commission dated November 16, 1988, the Division of Gaming Enforcement objected to the petitioner's licensure, based upon her alleged commission of the offense of theft by deception in the 3rd degree, contrary to N.J.S.A. 2C:20-4. These are the issues:

1. Has the petitioner committed acts which constitute the offense of theft by deception in the 3rd degree, contrary to N.J.S.A. 2C:20-4, which would be a disqualifier from licensure pursuant to sections 86c(1) and 90e of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the Act.

2. If the petitioner has committed acts which constitute an otherwise disqualifying offense pursuant to section 86c(1) of the Act, has she affirmatively established her rehabilitation by clear and convincing evidence, pursuant to section 90h of the Act.

3. Has the petitioner established by clear and convincing evidence that she possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act.

PROCEDURAL HISTORY

By letter dated January 2, 1989, the petitioner requested a hearing concerning her license application. On February 7, 1989, the Casino Control Commission transmitted this 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 telephone prehearing conference was scheduled to be held on April 11, 1989. However, the petitioner was not at home when the telephone conference call was placed. The matter was thereafter rescheduled and a telephone prehearing conference was held on May 5, 1989.

The hearing in this matter was originally scheduled to be held on August 29, 1989. However, the petitioner did not appear for the hearing until more than an hour after the hearing was to commence. By that time, counsel for the Division has already been excused. The hearing was then held as rescheduled on January 4, 1990. The record closed on that date.

FINDINGS OF FACT

Many of the material facts in this matter are not in dispute. The petitioner is a 32-year-old resident of Woodbine, New Jersey. She and her four children live with her mother. The petitioner's husband lives elsewhere and the petitioner has a divorce action pending. She is a high school graduate and has had three years of college.

It was the petitioner's testimony that she has never worked in the casino industry and she has never held a casino licensing credential. Since early 1989, the petitioner has been employed by the Ames Department Store as a front end supervisor. In this position, the petitioner trains new cashiers and handles large sums of money. Prior to her employment at the department store, the petitioner worked for about a year at a Rite Aid drug store. Prior to that employment and beginning in 1985, the petitioner was a homemaker and she received public assistance. At the moment, she is able to support her children and pay her mother $50 per week.

The petitioner testified at the hearing concerning the conduct which was the subject of the Division's objection to her license application. She stated that she had applied for and was receiving unemployment benefits in 1981. At the time she applied for the benefits, the petitioner was not working. At some point later in 1981, the petitioner was hired as a nurse's aid at the Rainbow Nursing Center (now the American Medical Nursing Center) in Bridgeton, New Jersey. However, the petitioner continued to receive unemployment benefits.

A claimant's benefit payment and employment record of the Division of Unemployment and Disability Insurance (Exhibit R-3) indicates that the petitioner initially applied for benefits on September 2, 1981. The record further indicates that the petitioner began her employment with the American Medical Nursing Center on October 15, 1981. According to the petitioner, this employment continued through September 1982. On October 28, 1981, the petitioner signed a record of claim interview and determination (Exhibit R-1). In this record, the petitioner stated that she had looked for work and had made personal contacts but that there were no openings. She further stated that she had a car for transportation and was willing to travel for either day or nighttime work. The record concludes with the petitioner's statement, "I have not worked, refused any work, or had any earnings since reopening my claim. I am ready, willing, (and) able to work full time."

It was the petitioner's testimony that she received a letter from the Division of Unemployment and Disability Insurance around February of 1982. This letter informed her that she had received an overpayment of unemployment benefits because she had been working. By notice dated April 29, 1983 (Exhibit R-5), the petitioner was informed of her right to a hearing on the allegation of the Division of Unemployment and Disability Insurance that she had received unemployment benefits to which she was not entitled. According to the petitioner, she did not participate in such a hearing and a judgment was eventually entered against her. A certificate of debt in the amount of $2,779 was entered against the petitioner in the Superior Court record of docketed judgments in July 1983 (Exhibit R-2). According to the petitioner, she agreed to pay back the overpayment of benefits at $50 per month. However, she was only able to make a few payments because she was having difficulty paying the mortgage on her home.

A computer printout from the New Jersey Department of Labor revealed that the petitioner had a remaining balance on her debt of $2,885, including interest, as of June 21, 1988 (Exhibit R-6). Six payments had been made, of which three were applied from State income tax refunds. The petitioner explained that although she had agreed to repay the debt, her husband had been using drugs and took the household money to buy them. She left her husband and he provides no support.

According to the petitioner, she filed for bankruptcy in 1983. No payments were made on her house in Cedarville, New Jersey, since that year. The bankruptcy proceeding was subsequently dropped, and the bank holding the mortgage on the Cedarville house allowed the petitioner the option of putting the house up for sale prior to a bank foreclosure. The house has been for sale since the summer of 1989.

A warrant for satisfaction filed with the clerk of the Superior Court on April 26, 1989, was admitted into evidence as exhibit P-1. This warrant indicates that the petitioner's indebtedness to the Department of Labor, Division of Unemployment and Disability Insurance, was completely satisfied. According to the petitioner, she did not pay this debt and she has no idea who did. The first she learned that the debt had been paid was when she received a copy of the warrant of satisfaction in the mail.

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 petitioner timely reported her earnings from employment to the Division of Unemployment and Disability Insurance. As noted above, the petitioner acknowledged that she had been receiving unemployment benefits before she was hired at the nursing center. She testified at the hearing that when she started her job, she wrote on an unemployment insurance form that she had been hired. Nevertheless, she continued to receive benefit checks, so she thought that she was entitled to them. The petitioner stated that she first realized that she was not entitled to the benefits when she received a letter to that effect from the Division of Unemployment and Disability Insurance in February 1982. The petitioner acknowledged that her circumstances had not been great and that she did need the money, but she maintained that she had not intentionally taken benefits to which she was not entitled.

The petitioner's testimony at the hearing contrasts sharply with the signed statement which she gave to the Division of Unemployment and Disability Insurance on October 28, 1981 (Exhibit R-1). It is undisputed that she was working as a nurses aid at the nursing center at the time she gave the statement. In her statement she expressly denies having worked and denies having any earnings since reopening her benefit claim. This statement was false. In addition, the petitioner's benefits thereafter continued unreduced while she maintained her employment. If she had reported her earnings, it should have been apparent to her that the report had been ignored. Nevertheless, she did nothing until the Division of Unemployment informed her that she had received an overpayment of benefits. These events, taken together with her false statement on October 28, 1981, prevent me from believing the petitioner's uncorroborated testimony that she reported her earnings from employment in 1981. Consequently, I further **FIND AS FACT** that she did not, and that she intentionally received unemployment benefits to which she was not entitled in the amount of $2,399 between October 17, 1981, and February 27, 1982.

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence her individual qualifications. Sections 89b(2) and 90b of the Act require an applicant for a casino employee license to demonstrate by clear and convincing evidence her good character, honesty and integrity.

The Act also sets forth grounds for disqualification. Section 90e incorporates the disqualification criteria set forth in section 86 of the Act. Pursuant to 86c(1) and 86g, the Casino Control Commission can deny a casino employee license to any applicant who has committed an offense specifically identified as a disqualifier from licensure, even if such conduct was not prosecuted in the criminal courts of this state.

Between October 1981 and February 1982, the petitioner received unemployment benefits to which she was not entitled. She was able to do this by intentionally failing to disclose to the Division of Unemployment and Disability Insurance that she had earnings from employment. By this deception, the petitioner received an overpayment of benefits in the amount of $2,399.

Pursuant to N.J.S.A. 2C:20-4, a person is guilty of theft if he purposely obtains property of another by deception. Since the petitioner's act of deception resulted in her obtaining benefits to which she was not entitled, I **CONCLUDE** that she has committed the offense of theft by deception. Since theft of an amount in excess of $500 but less than $75,000 constitutes a crime of the 3rd degree, pursuant to N.J.S.A. 2C:20-2b(2)(a), I further **CONCLUDE** that the petitioner has committed a theft constituting a crime of the 3rd degree. This is an offense specifically listed under section 86c(1) of the Act as a disqualifier. Therefore, I **CONCLUDE** that the petitioner is subject to denial of her application for a casino employee license on the basis of her conviction of a disqualifying offense.

Section 90 of the Act provides that the petitioner shall not be denied a casino employee license on the basis of her otherwise disqualifying offense, provided that she has affirmatively demonstrated her rehabilitation. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h shall be considered:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acqusition 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 license which the petitioner seeks would permit her employment on the floor of a casino as a teller. She has similar employment at the moment outside of the casino industry as a front end supervisor at the Ames Department Store. She apparently holds this employment without incident. The petitioner, who is a high school graduate and has had three years of college, is now 32 years old and is the mother of four children.

When the petitioner was 23 years old, she received unemployment benefits to which she was not entitled. This occurred between October 1981 and February 1982. As a result of her failure to report earnings from employment, the petitioner improperly received unemployment benefits of $2,399. Although the petitioner contended in her testimony at the hearing that she had reported her employment to the Division of Unemployment and Disability Insurance and that she had not intentionally received benefits to which she was not entitled, I have found the facts in this matter to be to the contrary.

The petitioner's offense occurred over a period of approximately four months. The record in this matter does not reveal that the petitioner has any record of arrests or convictions. Notwithstanding her conduct between October 1981 and February 1982, the petitioner was never charged with theft by deception. The credible evidence in the record

reveals that the petitioner's commission of theft by deception occurred while she was experiencing a difficult financial situation. Although the petitioner subsequently agreed to repay her overpayment of benefits, she was able to make only several payments. In addition, three State income tax refunds were applied to her debt. Curiously, the entire debt has been repaid and a warrant for satisfaction has been filed with the clerk of the Superior Court. The petitioner does not know how the debt was repaid.

With the unexplained repayment of her debt, the petitioner's financial situation has improved somewhat. In addition, she has been able to maintain employment for approximately two years. Given the substantial period of time which has passed since her commission of theft by deception, it would seem that the foregoing factors could arguably support a conclusion that the petitioner is rehabilitated. Unfortunately, I am unable to reach that conclusion. This is so because I believe the petitioner was not telling the truth during the hearing concerning her commission of the disqualifying theft by deception offense. While it was her testimony that she had not intentionally received benefits to which she was not entitled, the credible evidence in the record proved the contrary. This lack of candor constitutes significant evidence that the petitioner has not achieved rehabilitation.

Based upon the foregoing discussion, I **CONCLUDE** that the petitioner has failed to establish her rehabilitation by clear and convincing evidence, as required by section 90h of the Casino Control Act. Also based upon the foregoing, I **CONCLUDE** that the petitioner has failed to establish her good character, honesty and integrity by clear and convincing evidence, within the meaning of sections 89b(2) and 90b of the Act. Thus, I **CONCLUDE** that the petitioner is disqualified from licensure as a casino employee for the reasons identified above.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Valerie D. Allen for a casino employee license permitting her to work in a licensed casino as a teller be **DENIED.**

This recommended decision may be adopted, 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 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

3/29/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

April 2, 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For petitioner:

P-1 Warrant for satisfaction

For respondent:

R-1 Record of claim interview, dated October 28, 1981
R-2 Certificate of debt
R-3 Claimants benefit payment and employment record
R-4 Determination and demand for refund of unemployment benefits and imposition of penalty and disqualification because of willful misrepresentation
R-5 Notice of hearing
R-6 Computer printout of benefit repayment

WITNESSES

For petitioner:

Valerie D. Allen

For respondent:

Valerie D. Allen

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-440
REGISTRATION NO. 04612[illegible]-40
OAL DOCKET NO. CCC 05514-89
ORDER NO. 90-12-9

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

Complainant,

v.

SONNY ANDREWS,

Respondent.

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 March 21, 1990,

IT IS on this 27th day of April 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Sonny Andrews 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5514-89
AGENCY DKT. NO. 89-440

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
SONNY ANDREWS,
Respondent.

James J. Armstrong, Deputy Attorney General, for the petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Sonny Andrews, the respondent pro se

Record Closed: January 30, 1990 Decided: February 14, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Sonny Andrews' casino hotel employee registration no. 46123-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1), and therefore, he is disqualified from registration, pursuant to section 91b. The respondent contended that he was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so he could be employed as a kitchen worker at Trump Castle Hotel and Casino. By complaint to the Commission, filed June 22, 1989, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of possession of a controlled dangerous substance (marijuana) with the intent to distribute, which is the predecessor statute of N.J.S.A. 2C:35-5a(1), which is a disqualifying offense under section 86c(1). Based upon the complaint, the Commission notified the respondent on June 29, 1989, that he had the right to a hearing, and that failure to respond within 15 days could result in his registration being revoked. By application dated July 18, 1989, which was received by the Commission on July 20, 1989, the respondent requested a hearing. On July 21, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on July 26, 1989, 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 in the matter was held before Administrative Law Judge Lillard E. Law on October 3, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, to wit: N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute which is analogous to N.J.S.A. 2C:35-5.

B. Whether respondent may demonstrate rehabilitation pursuant to Section 91d of the Casino Control Act.

A hearing was held on January 30, 1990, in the Municipal Courtroom, Egg Harbor Township Municipal Building, Bargaintown, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On November 11, 1986, the respondent, Sonny Andrews, was driving his car in Atlantic City. Howard Hayes and William Bullock were passengers in the car. Officer Thomas of the Atlantic City Police Department saw a beer bottle being thrown from the car. After calling for additional support, Officer Thomas stopped the car being driven by the respondent. Upon approaching the car Officers Ricketts and Knight, who had responded to assist Officer Thomas, saw Mr. Hayes reach into his pocket.

The officers removed Mr. Hayes from the car, searched him and found three plastic bags containing a total of one and one-half grams of cocaine and three plastic bags containing a total of three grams of marijuana. The officers asked the respondent for permission to search his car, which he granted. In the trunk, the officers found 32 plastic bags containing a total of 105 grams of marijuana, four large plastic bags containing a total of 109 grams of marijuana, and $150 in cash. The officers also found a weighing scale in the glove compartment. The respondent was arrested and transported to the Atlantic City Police Department. Prior to being placed in a jail cell, the respondent was searched. Two plastic bags were found in his pocket. One bag contained cocaine and one bag contained methamphetamine. [P-3]

On December 4, 1986, the respondent was indicted in the Superior Court of New Jersey, Law Division (Criminal) by the Atlantic County Grand Jury in indictment no. 86-12-2433-D. He was charged with: Count Three, possession of a controlled dangerous substance (cocaine) in violation of N.J.S.A. 24:21-20a(1); Count Four, possession of a controlled dangerous substance (methamphetamine) in violation of N.J.S.A. 24:21-20a(1); Count Five, possession of a controlled dangerous substance (marijuana over 25 grams) in violation of N.J.S.A. 24:21-20a(1); Count Six, possession of a controlled dangerous substance (marijuana) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1); and Count Seven, conspiracy to facilitate the commission of the crime of possession of a controlled dangerous substance with the intent to distribute in violation of N.J.S.A. 24:21-24. [P-1]

On January 20, 1987, the respondent entered a plea of not guilty to the indictment. On March 4, 1987, the respondent retracted his plea of not guilty and entered a plea of guilty to count six of the indictment, possession of a controlled dangerous substance (marijuana) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1). On March 27, 1987, the respondent was sentenced to be incarcerated for 60 days in the Atlantic County Jail, to be placed on probation for two years, to pay a $30 Violent Crimes Compensation Board penalty, and to forfeit $161. The remaining counts of the indictment were dismissed. [P-2]

The respondent has one prior arrest resulting in a conviction. On January 18, 1986, fire investigators were investigating a fire in the respondent's apartment house. In the respondent's apartment, the investigators found a large bag containing marijuana, 16 small envelopes containing marijuana, six small plastic bags containing marijuana and three viles containing assorted pills. The respondent was arrested and was charged with count one, possession of a controlled dangerous

substance (marijuana over 25 grams) in violation of N.J.S.A. 24:21-20a(4) and count two, possession of a controlled dangerous substance (marijuana) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1). On April 4, 1986, the respondent entered a plea of guilty to the reduced charge of count one, possession of a controlled dangerous substance (marijuana under 25 grams). The respondent was sentenced in the Atlantic City Municipal Court to pay a $25 fine, $25 in court costs, and a $30 Violent Crimes Compensation Board penalty. Count two of the complaint was dismissed. [P-4]

The respondent also has three prior arrests for which there is no disposition indicated in evidence. On June 19, 1981, the respondent was arrested for possession of a controlled dangerous substance (marijuana under 25 grams), on August 31, 1984, the respondent was arrested for possession of a controlled dangerous substance (marijuana under 25 grams), and on November 27, 1985, the respondent was arrested for possession of marijuana over 25 grams. [P-4]

The respondent was born in St. Thomas, Virgin Islands on July 23, 1928. He was 58 years old at the time of the last offense, and he is currently 61 years old.

The respondent submitted three letters in his behalf. The first, written by Gene B. Solomon, job developer, Atlantic County Supported Work Program, dated July 26, 1989, provides:

> Sonny Andrews was enrolled in the Supported Work Program from October 16, 1987 until April 4, 1988. He was assigned to a building maintenance crew which cleaned Atlantic County Offices and other facilities. Mr. Andrews attendance, punctuality and attitude were equivalent to that of employees in the private sector. He was placed in a job as a kitchen worker at the Trump Castle Hotel and Casino. [R-1]

The second, written by Eddie Lamberty, cafeteria shift manager, Trump Castle Hotel and Casino, dated July 21, 1989, provides:

> Sonny Andrews has been an employee of Trump Castle since April of 1987. Sonny has been a model employee since he's been here. He's never missed a day and is always willing to help out wherever he is needed. He is truly a pleasure to work with, always on time and ready to work. I, as his Supervisor for the past year vouch for his integrity and loyalty. I'm looking forward for a few more years of working together. [R-2]

Finally, in a letter dated July 19, 1989 (R-3), Arthur Train, the respondent's probation officer indicated that while on probation the respondent completed all conditions of probation and was released from probation early because of improvement, on April 29, 1988.

FINDINGS OF FACT

1. On November 11, 1986, the respondent's car was searched by officers of the Atlantic City Police Department. In the trunk, the officers found 32 plastic bags containing a total of 105 grams of marijuana, four large plastic bags containing a total of 109 grams of marijuana, and $150 in cash. The officers also found a weighing scale in the glove compartment. The respondent was arrested and transported to the Atlantic City Police Department. Prior to being placed in a jail cell, the respondent was searched. Two plastic bags were found in his pocket. One bag contained cocaine and one bag contained methamphetamine.

2. On December 4, 1986, the respondent was indicted in the Superior Court of New Jersey, Law Division (Criminal) by the Atlantic County Grand Jury in indictment no. 86-12-2433-D. He was charged with: Count Three, possession of a controlled dangerous substance (cocaine) in violation of N.J.S.A. 24:21-20a(1); Count Four, possession of a controlled dangerous substance (methamphetamine) in violation of N.J.S.A. 24:21-20a(1); Count Five, possession of a controlled dangerous substance (marijuana over 25 grams) in violation of N.J.S.A. 24:21-20a(1); Count Six, possession of a controlled dangerous substance (marijuana) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1); and Count Seven, conspiracy to facilitate the commission of the crime of possession of a controlled dangerous substance with the intent to distribute in violation of N.J.S.A. 24:21-24.

3. On March 4, 1987, the respondent retracted his plea of not guilty and entered a plea of guilty to count six of the indictment, possession of a controlled dangerous substance (marijuana) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1). On March 27, 1987, the respondent was sentenced to be incarcerated for 60 days in the Atlantic County Jail, to be placed on probation for two years, to pay a $30 Violent Crimes

Compensation Board penalty, and to forfeit $161. The remaining counts of the indictment were dismissed.

4. The respondent has one prior arrest resulting in a conviction. On April 4, 1986, the respondent entered a plea of guilty to the charge of count one, possession of a controlled dangerous substance (marijuana under 25 grams). The respondent was sentenced in the Atlantic City Municipal Court to pay a $25 fine, $25 in court costs, and a $30 Violent Crimes Compensation Board penalty.

5. The respondent has three prior arrests for which there is no disposition indicated in evidence. On June 19, 1981, the respondent was arrested for possession of a controlled dangerous substance (marijuana under 25 grams), on August 31, 1984, the respondent was arrested for possession of a controlled dangerous substance (marijuana under 25 grams), and on November 27, 1985, the respondent was arrested for possession of marijuana over 25 grams.

6. The respondent was born in St. Thomas, Virgin Islands on July 23, 1928. He was 58 years old at the time of the last offense, and he is currently 61 years old.

7. The respondent has been an employee of Trump Castle since April of 1987. His work performance in the casino industry has been good.

8. While on probation the respondent completed all conditions of probation and was released from probation early because of improvement, on April 29, 1988.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

b. 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;

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

1. Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . . .

N.J.S.A. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance or a controlled dangerous substance analog which constitutes a crime of the second or third degree);

. . . .

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. 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 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, 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 or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

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

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

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

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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . .registrant." N.J.S.A. 5:12-129(1) provides for the revocation of 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 . . . registration." The Division contends, that the respondent committed a violation of N.J.S.A. 2C:35-5a(1), and that the respondent was convicted of a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance (marijuana) with the intent to distribute which is the predecessor statute of N.J.S.A. 2C:35-5a(1), which constitutes a violation of N.J.S.A. 5:12-86c(1), and that, accordingly, he is disqualified from continued registration.

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's possession of a controlled dangerous substance (marijuana) with the intent to distribute in violation of N.J.S.A. 24:21-19a constitutes a violation of N.J.S.A. 2C:35-5, which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 24:21-19, Prohibited acts A. - Manufacturing, distributing, or dispensing - Penalties, provides in pertinent part:

> a. Except as authorized by this act, it shall be unlawful for any person knowingly or intentionally:
>
> (1) To manufacture, distribute, or dispense, or to possess of have under his control with intent to manufacture, distribute, or dispense, a controlled dangerous substance; or
>
> . . .
>
> b. Any person who violates subsection a, with respect to:
>
> (3) Any other controlled dangerous substance classified in Schedules I, II, III or IV is guilty of a high misdemeanor and shall be punished by imprisonment for not more than 5 years, a fine of not more than $15,000.00, or both; . . . .

N.J.S.A. 2C:35-5, Manufacturing, distributing or dispensing, provides in pertinent part:

> a. Except as authorized by P.L. 1970 c.226 (C. 24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:
>
> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or
>
> . . .
>
> b. Any person who violates subsection a. with respect to:

> (10) Marijuana in a quantity of five pounds or more including any adulterants and dilutants, or hashish in a quantity of one pound or more including any adulterants and dilutants, is guilty of a crime of the second degree;
>
> (11) Marijuana in a quantity of one ounce or more but less than five pounds including any adulterants and dilutants, or hashish in a quantity of five grams or more but less than one pound including any adulterants and dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to $15,000.00 may be imposed;
>
> . . . .

The Division established that the respondent knowingly possessed marijuana. The Division further established that the respondent was convicted in Superior Court of possession of at least one ounce (31.103 grams) of a controlled dangerous substance (marijuana) with the intent to distribute. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:35-5a(1) and that the respondent was convicted of a violation of N.J.S.A. 24:21-19a which is the predecessor statute of N.J.S.A. 2C:35-5a. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-5b(11), the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-91d

A 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. 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 registrant's position;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

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

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

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

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.

In regard to the first criterion, Sonny Andrews is a casino hotel registrant and is employed as a kitchen worker. As such, he does not have direct responsibilities for actual gaming activities and does not come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:35-5a(1), possession of a controlled dangerous substance (marijuana) with the intent to distribute, prior to being employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1) and because it is a drug offense, it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent had in his possession a large quantity of marijuana. Some of it was contained in large plastic bags, and some of it had been divided into numerous small plastic bags for apparent sale and distribution. Apparently, the respondent was a drug dealer. Such conduct is extremely serious, and the admission of such persons into the casino industry would threaten the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations.

Fourth, the respondent's misconduct occurred in November 1986, when it ceased.

Fifth, the respondent was 58 years old at the time of the last offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was not isolated in nature. He was convicted in 1986 of possession of a controlled dangerous substance (marijuana), and he has three other prior arrests for possession of a controlled dangerous substance (marijuana).

Seventh, there do not appear to be any social conditions which may have contributed to the offense or conduct.

Eighth, the respondent submitted virtually no evidence of rehabilitation. He has been employed in the casino industry as a kitchen worker for nearly two years. His performance has been satisfactory. He was also released early from probation supervision for good behavior.

The Commission has recently addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases[1] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent is a kitchen worker. He has no responsibility for any casino gaming activity, and does not have contact with casino patrons. Considering the nature of the position he holds, the respondent's work record in the industry, the fact that he possessed a large quantity of drugs with the intent to distribute, the repetitive nature of his offense, his lack of involvement in the community, and his lack of evidence of rehabilitation, when weighed against the eight rehabilitative criteria:

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

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1 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. NO. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. NO. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** and that registration no. 46123-40 be revoked.

This recommended decision may be adopted, 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 14, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

2/15/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 21 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Atlantic County Indictment No. 86-12-2433-D, filed December 4, 1986

P-2 Judgment of Conviction, dated March 27, 1987

P-3 Atlantic City Police Department Arrest Report, dated November 11, 1986

P-4 Atlantic City Police Department Arrest Report, dated January 18, 1986, respondent's arrest record, and complaint

For the Respondent:

R-1 Letter of Gene B. Solomon, job developer, Atlantic County Supported Work Program, dated July 26, 1989

R-2 Letter of Eddie Lamberty, cafeteria shift manager, Trump Castle Hotel and Casino, dated July 21, 1989

R-3 Letter of Arthur H. Train, probation officer, Atlantic County Probation Department, dated July 19, 1989

WITNESSES

For the Petitioner:

None

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-435; 90-61
APPLICATION NO. 79959-21
REGISTRATION NO. 97334-40
OAL DOCKET NOS. CCC 04731-89 AND CCC 6527-89
ORDER NO. 89-50-11

APPLICATION OF JOHN M. AUGUST
FOR A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

ORDER

v.

JOHN M. AUGUST,

Respondent.

A hearing 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 December 20, 1989,

IT IS on this 4th day of January 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted and the complaint is dismissed substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 4731-89 AND
CCC 6527-89
AGENCY DKT. NOS. 89-EA-435
AND 90-61
(CONSOLIDATED)

JOHN M. AUGUST,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.
AND
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
JOHN M. AUGUST,
Respondent.

John M. Donnelly, Esq., for petitioner-respondent (Clapp & Eisenberg, attorneys)
Charles Kimmel, Deputy Attorney General, for respondent-petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: September 21, 1989 Decided: November 6, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) alleges, among other things, that John M. August (petitioner) committed acts of obtaining Controlled Dangerous Substance (CDS) by fraud and deceit and unlawfully possessed CDS which automatically disqualifies him from holding a casino employee license under section 86c of the Casino Control Act (Act) despite the fact that petitioner was not criminally prosecuted for the acts, as provided by section 86g of the Act. The Division, therefore, objects to the issuance of a casino employee license to petitioner. In addition, the Division seeks a judgment to revoke petitioner's casino hotel employee registration.

PROCEDURAL ASPECTS

The Division filed its objection letter with the Casino Control Commission (Commission) on May 16, 1989. On June 28, 1989, the matter was transmitted to the Office of Administrative Law (OAL) 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 8, 1989, a prehearing conference was held at which, among other things, the issues to be determined and a hearing date were set. The Division was also granted leave to amend its pleadings to include a complaint against petitioner's casino hotel employee registration. The Division's complaint was filed before the Commission on August 21, 1989 and on August 30, 1989, it was transmitted to the OAL with instructions to consolidate it with petitioner's application for a casino employee license.

The hearing was held on September 21, 1989, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record closed on that date.

ISSUES

The issues to be determined by this tribunal and as agreed to by the parties at the prehearing conference are these:

A. Whether petitioner engaged in conduct which constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: Unlawful Possession of Controlled Dangerous Substance (CDS), comparable to N.J.S.A. 2C:35-10; and, Obtaining CDS by Fraud and Deceit, comparable to N.J.S.A. 2C:35-13.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2)?

C. Whether petitioner may demonstrate rehabilitation pursuant to sections 90h and 91d of the Casino Control Act (Act)?

UNDISPUTED FACTS

Petitioner is employed by Central Credit of New Jersey (CCNJ), a subsidiary of the Casino Association of New Jersey (CANJ). CCNJ is a company established by licensed casinos in Atlantic City to check and report credit of gaming patrons and to act as a clearinghouse for credit information of patrons. At some point in time, not specified on the record, the Commission determined that key employees of CCNJ must be licensed pursuant to the statutory standards for key employees under section 89 of the Act. The Commission's determination has been interpreted to extend to all CCNJ employees. Therefore, petitioner has applied for a casino employee license, pursuant to section 90 of the Act.

Petitioner is presently 31 years of age. In June 1981, he graduated from the University of Pennsylvania and awarded a Bachelor of Science in Nursing degree at the age of 23 years. After his graduation, he moved to New York City and worked in Columbia Presbyterian hospital for approximately six months. Subsequently, he changed jobs and was employed at the New York University Medical Center (NYUMC) in its intensive care unit (ICU).

During this initial employment with NYUMC, petitioner worked the night shift and was generally unsupervised. He had access to the ICU's drug locker where he would remove prescription drugs or CDS for administration to his patients. Between July to October 1983, petitioner removed certain of the CDS from the ICU drug locker for his personal use; i.e., morphine and meperidine (Demerol). Petitioner's scheme was to remove the narcotic from the drug lockbox by signing the drug out for a patient and not enter the information onto the patient record. Petitioner therefore made a false entry into the drug log in order to acquire the drugs. Petitioner's activity was discovered by a supervisor after at least 80 occasions of his making false entries into the drug log. Petitioner did not deprive any patient of drugs when he took them for his own use nor did he falsify a patient's chart to show that drugs had been administered when they had not.

Petitioner was neither arrested or charged criminally for the offenses. Rather, he admitted to the conduct and he was adjudged administratively by the New York State Board of Regents, Office of Professional Discipline, to have been in violation of New York Public Health Law, Article 33, with the imposition of a civil penalty of $1,200 and the suspension of his license. The license suspension was subsequently stayed and petitioner was placed on probation for two years. Petitioner subsequently satisfied the $1,200 civil penalty.

Petitioner was terminate by NYUMC and from about January 1984 through January 1986, he was employed elsewhere in nursing related activities. In or about February 1986, petitioner was reemployed by NYUMC, the only employee ever to be rehired under circumstances which lead to his termination. In November 1986, it was discovered that petitioner was again falsifying drug records to acquire CDS for his personal use. Petitioner's license was under probation during this period of his employment with NYUMC. Subsequent to the discovery of his second drug abuse offense, NYUMC placed petitioner on medical disability leave until March 6, 1987, when he resigned. Thereafter, on June 24, 1988, petitioner admitted to the offense and at an administrative hearing was fined $5,000 in civil penalty of which $4,500 was waived if petitioner committed no further violations of the Public Health Laws within a five year period. Petitioner's license was suspended and he is presently appealing that order.

Prior to the discovery of petitioner's second offense at NYUMC, he was engaged in a voluntary counseling and treatment program for his drug addiction at the Botybl clinic in Marlton, New Jersey. At this time, petitioner and his wife resided in Marlton and petitioner commuted to New York City to his job at NYUMC. Subsequent to the second offense, petitioner continued his treatment at the Botybl Clinic for approximately nine months with a clinical psychologist specializing in drug and alcohol rehabilitation. The psychologist was satisfied with petitioner's drug rehabilitation, however, he was concerned about petitioner and his wife's relationship and recommended that the couple seek counseling by an expert in marriage and substance abuse. Petitioner is presently with Roy Shirley, a professional counselor and therapist at Life Resource Associates, Glenside, Pennsylvania.

Petitioner has been employed by CCNJ for two and one-half years during the firms initial stages of operation. He worked as an administrative assistant to Ronald Gottardi, vice president and chief operating officer (CEO) of CCNJ. Later, petitioner was moved to the position of data programmer trainee and presently he is the firms personal computer coordinator (PCC).

Thomas D. Carver, president of the Casino Association of New Jersey asserts that petitioner performs his work duties at CCNJ in an excellent manner. Mr. Carver also opines, among other things, that petitioner is a caring, decent and fine young gentleman who reminds Carver of his own son. He expressed that he is very proud of petitioner. Mr. Gottardi asserted, among other things, that petitioner is a model citizen who possesses good character, honesty and integrity.

CONTESTED FACTS

Petitioner asserted that it was the stress of his job in the ICU which contributed to his drug abuse. He stated, among other things, that he worked the night shift at NYUMC and that his patients were the most ill who needed life support to keep them alive. Most of the patients, approximately one-half, did not survive which added to his stress. Those patients who did survive tended to be in a great deal of pain and needed to be sedated with narcotic drugs. When petitioner withdrew a prescribed drug from the drug locker for a patient, he took an extra

measure for himself. Petitioner believed he could handle the drugs, which he took intravenously, without any serious consequences.

On the second occasion, petitioner asserts that he was living in Medford, New Jersey and commuting to NYUMC each of four work days. Petitioner was spending between 14 and 16 hours each day in work and travel. He asserted that he was tired and sleep-deprived with very little time for his marriage or a social life. The officials of NYUMC were aware of petitioner's skills and his former difficulties with CDS, nevertheless, placed him in a position where he had access to narcotics with very little supervision. Petitioner commenced to use drugs from his assigned area in the same manner as he had on the first occasion. After he had been under the influence of the drugs for a short period of time, petitioner's wife noticed the change in petitioner's behavior. She challenged petitioner where the two of them determined that petitioner should report his conduct to his supervisor at NYUMC. The officials at NYUMC discovered the shortage of drugs at the institution before petitioner was able to make his report. When confronted with the evidence of the shortfall, petitioner readily admitted to the offense.

There being no evidence proffered to the contrary, I **FIND** the above recital to be true, in fact, and hereby adopt and incorporate such facts as **FINDINGS OF FACT** in this matter.

DISCUSSION AND CONCLUSIONS

Disqualifying Offenses Under Section 86c of the Act

Pursuant to N.J.S.A. 5:12-1b(8), it is established 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 sanctions against the license held by a person "for the commission of any other offenses 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 of the enumerated offenses under Title 2C of the New Jersey statutes shall be disqualified from holding a casino license. Section 86g of the Act provides that

"even if such conduct has not or may not be prosecuted under the criminal laws of this State, "the Commission shall deny a license to any person who has committed any offense under section 86c of the Act.

The Division contends that petitioner's violation of New York Health Law, Article 33, was, under his admitted circumstances, comparable to violations of New Jersey statutes of possession of CDS and obtaining CDS by fraud and deceit. N.J.S.A. 2C:35-10 and N.J.S.A. 2C:35-13 respectively. Petitioner admits that he obtained CDS while employed at NYUMC by falsification of records which misrepresented the legitimate use and dispersement of the drugs. N.J.S.A. 2C:35-13 provides, in pertinent part, that:

> It shall be unlawful for any person to acquire or obtain possession of a controlled dangerous substance or controlled substance analog by misrepresentation, fraud, forgery, deception or subterfuge. ... A violation of this section shall be a crime of the third degree. ...

Section 35-13 of the New Jersey Code of Criminal Justice is one of the specific enumerated offenses under section 86c(1) of the Act. The commission of such an offense, albeit not prosecuted in the courts of this State, constitutes grounds for automatic disqualification for licensure in the casino industry.

I **CONCLUDE** , therefore, that the Division has met it's burden, by a preponderance of the credible evidence, that petitioner is disqualified from holding a casino employee license by virtue of his commission of the offense of obtaining CDS by fraud. N.J.S.A. 2C:35-13.

Rehabilitation, Under Sections 90h and 91d of the Act

An applicant, licensee or registrant 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 or registration by affirmatively demonstrating his 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 for rehabilitation is to be made:

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

2. The nature and seriousness of the offense or conduct;
3) The circumstances under which the offense or conduct occurred;
4) The date of the offense or conduct;
5) The age of the applicant when the offense or conduct was committed;
6) Whether the offense or conduct was an isolated or repeated incident;
7) Any social condition which may have contributed to the offense or conduct;
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 who have had the applicant under their supervision.

First, petitioner is an applicant for licensure as an electronic data processing (EDP) employee with CCNJ. The work station for this position is outside of any casino and petitioner will have no direct contact with the gaming tables or with casino patrons.

Second, the offense of obtaining CDS by fraud, which petitioner committed in the State of New York, is a serious crime of the third degree in the State of New Jersey where a fine of up to $30,000 may be imposed. N.J.S.A. 2C:35-13.

Third, petitioner committed the offenses while he was unsupervised and under stress from his job as a nurse in a ICU ward. He was also having difficulty in his marriage and his relationship with his wife. Petitioner believed he could use CDS without any adverse consequences. Petitioner was wrong.

Fourth and fifth, the offenses were committed during two different years; i.e., 1983 when petitioner was 25 years of age and 1986 when he was 28 years old.

Sixth, the offenses were repeated where, in 1983, petitioner falsely took CDS from the ICU drug locker some 80 times over the period of July to October. Subsequently, in 1986, petitioner committed the same offense on at least 10 occasions."

Seventh, there were no social conditions which contributed to petitioner conduct.

Eighth, petitioner has changed his profession from nursing to data processing. He is well respected by his employers in his new profession and has experienced

changed duties and responsibilities in the two and one-half years of employment at CCNJ. He has a promising future in his new found profession.

Petitioner has been and is presently under the guidance of a professional counselor, Roy Shirley. Mr. Shirley has no doubts about petitioner's future behavior and that petitioner will refrain from substance use and abuse. In addition, petitioner and his wife have been involved in their church and, in particular, with a support group which uses the 12-step approach of Alcoholic Anonymous.

Having carefully considered all of the factors enumerated in sections 90h and 91d of the Act, and having given fair weight thereto, I am persuaded that petitioner has met his burden and affirmatively established his rehabilitation. Notwithstanding the fact that he violated a trust when he was rehired by NYUMC and then committed the same offense for which he had earlier been terminated and fined; the record demonstrates that petitioner has been free from substance abuse for three years. He has changed professions and will not be tempted to use CDS in the work place as he did in the past. In addition, the prospects that he will ever engage in such abusive behavior in the future are nil.

Accordingly, I **FIND** and **CONCLUDE** that petitioner is rehabilitated and will refrain from the illegal use of CDS in the future.

Good Character, Honesty and Integrity as Required by Section 89b(2) of the Act

Pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b of the Act, petitioner is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra ; In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character

and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, as a standard, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that petitioner possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Petitioner produced four witnesses each of whom testified as to petitioner's good character and honesty. The record demonstrates that petitioner has never attempted to hide the fact that he abused dangerous substances. He freely admitted to his transgressions when confronted with the allegations that he filed false drug reports while employed by NYUMC. He has been characterized as a caring, decent young man who is a model citizen with good character, honesty and integrity.

I observed petitioner as he testified at the hearing and find he was candid and credible. He spoke the truth and did not hesitate to answer questions addressed to him by the Deputy Attorney General, his own counsel or the court. In Re Perrone, 5 N.J. 514, 522 (1950).

I **FIND** and **CONCLUDE** that petitioner has met his burden and has clearly and convincingly established his good character, honesty and integrity as required by section 89b(2) of the Act.

ORDER

Accordingly, it is hereby **ORDERED** that the Division's complaint seeking the revocation of petitioner's casino hotel employee registration be and is hereby **DISMISSED**.

It is further **ORDERED** that the Division's objection to the Commission's issuance of a casino employee license is also **DISMISSED**.

Therefore, it is hereby **ORDERED** that the casino employee license no. 79959-21 be issued to John Mark August as soon as practical.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

6 November 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

11/8/89
DATE

Kim Moore
CASINO CONTROL COMMISSION

Mailed to Parties:

Nov. 13, 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Roy Shirley
Thomas D. Carver
C. Dawson Yeomans
Ronald Gottardi
John M. August

For the Respondent:

John M. August

EXHIBIT LIST

For the Petitioner:

P-1 Letter of recommendation, dated September 20, 1989, from Penny Freeman
P-2 Central Credit of New Jersey table of organization

For the Respondent:

R-1 Personal History Disclosure Form 2A

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-1
APPLICATION NO. 080127-22
REGISTRATION NO. 067031-40
OAL DOCKET NO. CCC 5722-89
ORDER NO. 90-12-6

APPLICATION OF YVETTE A. BAILEY
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 March 21, 1990,

IT IS on this 28th day of March 1990, ORDERED that the initial decision is adopted; 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

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining 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 this denial shall not affect Yvette A. Bailey's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5722-89
AGENCY DKT. NO. 90-EA-1

YVETTE A. BAILEY,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Yvette A. Bailey, pro se

Charles F. Kimmel, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: January 12, 1990 Decided: February 5, 1990

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

Yvette A. Bailey applied to the Casino Control Commission for licensure as a casino employee with a position designation of maintenance and cleaning. By letter of June 13, 1989, the Division of Gaming Enforcement ("Division") advised the Casino Control Commission ("Commission") that it objected to licensure. The basis for its objection was the allegation that Ms. Bailey had been convicted of shoplifting, a violation of N.J.S.A. 2C:20-11, in the Egg Harbor Township Municipal Court on May 2, 1983, and that at the time of filing out her Personal HIstory Disclosure Form in connection with the application for licensure, she failed to disclose the arrest and conviction. The Division contended that this failure to disclose material information required denial of licensure under the terms of N.J.S.A. 5:12-86b.

Ms. Bailey 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 Lillard E. Law on October 3, 1989. Judge Law issued a Prehearing Order of that date. The hearing was held before Administrative Law Judge Jeff S. Masin on January 12, 1990, at the Office of Administrative Law in Atlantic City.

ISSUE

The issue for resolution at the hearing was defined in the Prehearing Order as whether the petitioner, with specific reference to her record of arrest, has failed to reveal any facts material to qualification for her casino employee license within the meaning of section 86b. In addition, whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).

Evidence at the hearing was limited to the testimony of Yvette A. Bailey and Agent Patrick B. Hickey of the Division of Gaming Enforcement. Ms. Bailey, who is 25 years old, unmarried with no dependents, testified that she filled out her Personal History Disclosure Form at home sometime in December 1988. At the time, she saw the question concerning arrests, which is on page 15 and reads:

> 16. 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: 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? If yes, complete the following chart:
>
> _____ yes; _____ no

In response to the above question, Ms. Bailey checked the "no" line and wrote under the columns requesting the nature of the charge or arrest and the other applicable information that they "do not apply." She initialed the bottom of the page as is required for each page, of the application.

Ms. Bailey initially contended that she had "made a mistake" and then immediately added that she "felt she wouldn't get a license." She indicated that the offense itself involved a pair of sun glasses which she had been looking at in a store and had put into her pocket.

On cross-examination, Ms. Bailey first said that she did not understand that shoplifting was to be listed. She was aware that she had been fined as a result of the offense and had paid some of the fine, although she still owed $140.

Agent Patrick B. Hickey of the Division of Gaming Enforcement testified that he was assigned to investigate Ms. Bailey's license application. After reviewing the application and learning from other sources information that she had in fact been arrested, Hickey called her on the telephone. He read the entire question 16 to her and she responded "no," but then admitted that she had been arrested and said that she was afraid that she would not get licensed.

DISCUSSION

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

> The Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> a. . . .;
>
> b. 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;

The evidence presented herein makes it abundantly clear that Yvette A. Bailey did not list her arrest because she was fearful that doing so might cause her to be denied a license. Although she spoke during the hearing of a "mistake" and also mentioned that she did not understanding that shoplifting was to be listed, I do not believe that her reason for not noting the arrest was quite so innocent. Ms. Bailey's testimony included several references to her fear of denial. Although there may have been some confusion on her part, I am completely satisfied that the reason for her failure to list was purposeful. Unfortunately, although there is no assurance that she would have been denied licensure had she listed the arrest and conviction, her purposeful failure to do so violates N.J.S.A. 5:1286(b) and requires that her license be denied.

The failure of Ms. Bailey to list her arrest reflects adversely upon her honesty and integrity. Although she may have feared that disclosure would defeat her attempt to gain licensure, this fear gave her no license to lie. She has failed to meet her burden of affirmatively establishing her good character, honesty and integrity by the requisite clear and convincing evidence, N.J.S.A. 5:12-90b, incorporating 89b(2).

CONCLUSION AND ORDER

Ms. Bailey is disqualified from licensure. Her application must therefore be denied. It is so **ORDERED**.

This recommended decision may be adopted, 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 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(c).

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

January 5, 1990
DATE

JEFF S. MASIN, ALJ

Agency Receipt:

2/6/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 8 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

tp

EXHIBITS

For petitioner:

P-1 Letter of Harold Ringgold

For respondent:

R-2 Personal History Disclosure Form 2A

WITNESSES

For petitioner:

None

For respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-270
OAL NO. CCC 2463-89
ORDER NO. 90-3-20

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

Complainant,

v. ORDER

BALLY'S PARK PLACE CASINO HOTEL,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the parties' Stipulation of Facts and Settlement Agreement having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of January 17, 1990,

IT IS on this 19th day of January 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Bally's Park Place Casino Hotel pay a total civil penalty in the amount of $8,000 for its two admitted violations of N.J.S.A. 5:12-119(b), due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /dlp
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 2463-89

AGENCY DKT. NO. 89-270

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

v.

BALLY'S PARK PLACE CASINO HOTEL,
Respondent.

Katrina F. Wright, Deputy Attorney General for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Shelley C. Waxman, Esq., for respondent

Record Closed: October 31, 1989 Decided: November 28, 1989

BEFORE **EDGAR R. HOLMES,** ALJ:

STATEMENT OF THE CASE

This case involves underage gambling.

This matter was transmitted to the Office of Administrative Law on April 5, 1989 for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

The matter was settled on the first day of hearing.

The parties have agreed to settle this matter and have prepared the stipulation indicating the terms of settlement.

I have reviewed the record and the settlement terms and **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

This recommended decision may be adopted, 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 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.

11/28/89
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

12/1/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 4 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

ldr

98

J-1
erh
10/31/89

PETER N. PERRETTI, JR.
Attorney General of New Jersey
Attorney for the State of New Jersey
Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: Katrina F. Wright
Deputy Attorney General
(609)984-3969

Attorney for Complainant
State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement

Shelley C. Waxman
Assistant Counsel
Bally's Park Place Casino Hotel
Park Place and the Boardwalk
Atlantic City, New Jersey 08401
609-340-2820

Attorney for Respondent
Bally's Park Place Casino Hotel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 89-270
OAL DOCKET NO. CCC 2463-89

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant vs. BALLY'S PARK PLACE CASINO HOTEL, Respondent.	STIPULATION OF FACTS

This matter having been discussed by and among the parties involved, Peter N. Perretti, Jr., Attorney General of New Jersey, attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Katrina F.

Wright, Deputy Attorney General and Shelley C. Waxman, Esquire, Assistant Counsel for Respondent, Bally's Park Place Casino Hotel, it is hereby stipulated to and agreed to by and among the parties as follows for purposes of resolving this matter:

1. Complainant, by and through its Division of Gaming Enforcement (hereinafter referred to as "the Division") now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1, et seq. (hereinafter referred to as "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter referred to as "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, Bally's Park Place Casino Hotel ("hereinafter referred to as Bally's") is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at Park Place and the Boardwalk, in the City of Atlantic City, County of Atlantic, State of New Jersey.

3. Bally's is now the holder of a casino license issued by the Commission authorizing it to operate a hotel casino in accordance with the Act and the regulations promulgated thereunder. The said license was issued to Bally's effective December 29, 1980, and most recently renewed on September 21, 1988. Bally's has been conducting its hotel casino operations pursuant to said license

continually to date since that time including all times referenced herein.

4. Bally's is the holder of, and operates pursuant to, a Certificate of Operation effective December 29, 1979, at which time Bally's was the holder of a temporary casino permit. Said Certificate of Operation entitles Bally's to operate a hotel casino in accordance with the provisions of the Act, N.J.S.A. 5:12-1, et seq. and the regulations promulgated thereunder.

5. On or about June 23, 1988, Mitchell Scott Dickman was eighteen (18) years of age, his birth date being June 8, 1970.

6. On or about June 23, 1988, Matthew Hayden Rosenblum was seventeen (17) years of age, his birth date being December 18, 1970.

7. On or about June 23, 1988, Mitchell Scott Dickman and Matthew Hayden Rosenblum entered Bally's casino room and gambled at Blackjack.

8. On or about June 23, 1988, at approximately 2:00 p.m., Detective Joseph McGovern, of the New Jersey State Police, Casino Response Unit, Division of Gaming Enforcement, observed two (2) males at BJ Table 2A-201, who appeared to be under the age of 21 years, playing Blackjack on the casino floor of Bally's. Upon questioning the two males, Detective McGovern ascertained their names, Mitchell Scott Dickman and Matthew Hayden Rosenblum, and their ages, eighteen (18) and seventeen (17), respectively. Both males were then arrested and processed. A true and correct copy of the New Jersey State Police Arrest Report of Mitchell Scott Dickman

is attached hereto and made a part hereof as Exhibit A. A true and correct copy of the New Jersey State Police Arrest Report of Matthew Hayden Rosenblum is attached hereto and made a part hereof as Exhibit B. A true and correct copy of the investigation memorandum by Detective Joseph McGovern is attached hereto and made a part hereof as Exhibit C.

9. N.J.S.A. 5:12-119(b) was effective at all times referenced herein and provides in pertinent part:

> "Any licensee or employee of a casino who allows a person under the age at which a person is authorized to purchase and consume alcoholic beverages to remain in a casino room is a disorderly person..."

10. By permitting Mitchell Scott Dickman and Matthew Hayden Rosenblum, two (2) underage persons, to enter the casino and to gamble in the casino, as set forth more fully in paragraphs seven (7), eight (8), and nine (9), Respondent, Bally's, violated N.J.S.A. 5:12-119(b).

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that, in recognition of the foregoing, this Stipulation shall be subject to the approval and acceptance of the Casino Control Commission, and shall be null and void if it is not approved and accepted by the Casino Control Commission.

The undersigned consent to the form and entry of this Stipulation of Facts.

Respectfully submitted,

Peter N. Perretti, Jr.
Attorney General of New Jersey
Attorney for the State of New Jersey

Date: October 31, 1989

By: Katrina F Wright
Katrina F. Wright
Deputy Attorney General

Attorney for Respondent
Bally's Park Place Casino Hotel

Date: 10/31/89

By: Shelley C. Waxman
Shelley C. Waxman
Assistant Counsel

100289/1cb

The parties agree that the penalty herein should be $8000.$^{00}_{xx}$ based upon a $4000.$^{00}_{xx}$ penalty for each violation.

Peter N. Perretti, Jr. Attorney General N.J.
by Katrina F Wright 10/31/89
Katrina F Wright D.A.G.
Bally's Park Place Casino Hotel
by Shelley C. Waxman 10/31/89
Shelley C. Waxman Esq.
Office of Administrative Law
by Edgar R Holmes
Edgar R Holmes ALJ

NEW JERSEY STATE POLICE
ARREST REPORT

FBI Identification Number

SBI Identification Number

CID Identification Number

Other

EXHIBIT

1. Station/Unit	2. Code	3. Phone Number	4. UCR	5. Prosecutor's Case Number	6. Division Case Number
Casino South Unit	J021	441-7464			J02188974

7. Name (First)	(Middle)	(Last)	8. Phone No. (Area)	9. Alias / Nickname
Mitchell	Scott	Dickman	516-921-2114	Mitch

10. Full Address (No.) (Street)	10A. Municipality	10B. County	10C. State	10D. Zip	11. Place of Birth (City) (State)
17 Glenn Dr.	Woodbury	Nassau	New York		Manhattan, N.Y.

12. Date of Birth	13. Age	14. Sex	15. Race	16. Ht. (Ft./In)	17. Weight	18. Hair	19. Eyes	20. Complexion	21. Marital Status
6-8-70	18	M	IB	510	164	Brn	Brn	Fair	Single

22. Other Descriptive Information — Marks — Scars — Tattoos	23. Driver's License Number
None	D09104708380939407O N.Y.

24. Employer / School	25. Occupation	26. Social Security Number
M & M Automotive Car Care	Detailer	127-52-4225

27. Employer's / School Address	28. Business Phone (Area) (Extension)
17 Glenn Dr. Woodbury, N.Y.	516-921-2114

DETAILS OF ARREST

29. Arrest Date	30. Time	31. Loc. of Arrest (No. - Street) 31A. Municipality 31B. County 31C. State	32. Municipal Code
6-23-88	2:00 ☐AM ☒PM	Bally's Park Place Casino Atlantic City Atlantic N.J.	0102

33. Crime	33A. Total Crimes	34. NJ Statute	35. Warrant/Summons Number
Underage Gambling	2	5:12-119a	S 196749

36. Complainant's Name and Address — Zip Code	37. Phone Number (Area)
Det. J.J. McGovern #3796 N.J.S.P. Division of Gaming Enforcement	609-441-7464

38. Crime Date	39. Time	40. Loc. of Crime (No. Street) 40A. Municipality 40B. County 40C. State	41. Municipal Code
6-23-88	2:00 ☐AM ☒PM	Bally's Park Place Casino Atlantic City Atlantic N.J.	0102

42. Arrest	43. Juv. Code	44. Constitutional Rights	45. Constitutional Rights — By whom	46. How Responded
☒On View ☐Summ. ☐W/Warrant ☐W/O Warrant ☐P.R.A.		☒Yes ☐No	Det. J.J. McGovern #3796	4

47. Own	48. Multiple	49. Other	50. Fingerprinted	51. Photographed	52. NCIC	53. Previous Record
XX			☐Yes ☒No	☒Yes ☐No	☐Wanted ☒No Record ☒Yes ☐No	☐Yes ☒No

54. Vehicle Information	Year	Make	Body Type	Color	Reg. Number and State	Other Descriptive Information — VIN
N/A ☐Owned ☐Used						

BAIL HEARING

55. Date	56. Court	57. Judge Setting Bail
6-23-88		

58. Amount Bail	59. Results of Hearing	60. Code	61. Place Committed / Detained
	☐Released on Bail ☐Committed in Default XX☒R. O. R. ☐Committed W/O Bail		

FINAL DISPOSITION

62. Date	63. Court	64. Judge
7-6-88	City of Atlantic City	Judge Bruce Weaks

65. Disposition	66. Code	67. T.O.T.	68. Sentence	69. Code
☒Guilty ☐Dismissed ☐Lesser Offense ☐Acquitted		☐Yes ☐No	$30.00 VVCB Guilty $100.00 Fine, $25.00 Court Cost	

JUVENILE INFORMATION

70. Parent/Guardian/Probation — Contacted By	71. Date Contacted	72. Time Contacted ☐AM ☐PM	73. Released to/Detained at

74. Full Address — Number — Street — Municipality — State — Zip Code	75. Phone Number (Area)	76. Date	77. Time ☐AM ☐PM

78. Parent/Guardian's Name (First) (Middle) (Last)	79. Full Address — Number — Street — Municipality — State — Zip Code	80. Phone No. (A

81. Co-defendants	82.	83.	84.	85.	86.	87. UCR — A.S.R. Reporting Mon. ____ Yr. ____
1						

104

88. Narrative/Additional Charges

Box # 33 cont'd Poss. of False or Altered Drivers Licenses, 39:3-38.1
Accused was observed playing Blackjack underage in casino, also had false license in poss.

NEW JERSEY STATE POLICE
ARREST REPORT

EXHIBIT B

FBI Identification Number
SBI Identification Number
CID Identification Number
Other

1. Station/Unit	2. Code	3. Phone Number	4. UCR	5. Prosecutor's Case Number	6. Division Case Number
Casino South Unit	J021	441-7464			J02188974

7. Name (First)	(Middle)	(Last)	8. Phone No. (Area)	9. Alias / Nickname
Matthew	Hayden	Rosenblum	516-921-6683	Matt

10. Full Address (No.) (Street)	10A. Municipality	10B. County	10C. State	10D. Zip	11. Place of Birth (City) (State)
96 Belmont Circle	Syosset	Nassau	New York	11791	Manhattah, N.Y.

12. Date of Birth	13. Age	14. Sex	15. Race	16. Ht. (Ft./In)	17. Weight	18. Hair	19. Eyes	20. Complexion	21. Marital Status
12-18-70	17	M	IB	511	190	Blk	Brn	Fair	Single

22. Other Descriptive Information — Marks — Scars — Tattoos	23. Driver's License Number
None	R6693-52968-12702 N.J.

24. Employer / School	25. Occupation	26. Social Security Number
Deck Savers	Carpenter	099-66-2500

27. Employer's / School Address	28. Business Phone (Area) (Extension)
Home Address	N/A

DETAILS OF ARREST

29. Arrest Date	30. Time	31. Loc. of Arrest (No. - Street)	31A. Municipality	31B. County	31C. State	32. Municipal Code
6-23-88	2:00 ☐AM ☑PM	Bally's Park Place Casino	Atlantic City	Atlantic	N.J.	0102

33. Crime	33A. Total Crimes	34. NJ Statute	35. Warrant/Summons Number
Juvenile Delinquency (Underage Gambler, Poss. of False ID)	1	2A:4A-23	None

36. Complainant's Name and Address — Zip Code	37. Phone Number (Area)
Det. J.J. McGovern #3796 N.J.S.P. Division of Gaming Enforcement	609-441-7464

38. Crime Date	39. Time	40. Loc. of Crime (No. Street)	40A. Municipality	40B. County	40C. State	41. Municipal Code
6-23-88	2:00 ☐AM ☑PM	Bally's Park Place Casino	Atlantic City	Atlantic	N.J.	0102

42. Arrest	43. Juv. Code	44. Constitutional Rights	45. Constitutional Rights — By whom	46. How Responded
☒On View ☐Summ. ☐W/Warrant ☐W/O Warrant ☐P.R.A.	4	☒Yes ☐No	Det. J.J. McGovern #3796	4

47. Own	48. Multiple	49. Other	50. Fingerprinted	51. Photographed	52. NCIC	53. Previous Record
XX			☐Yes ☒No	☐Yes ☒No	☐Wanted ☒No Record ☐Yes ☒No	☐Yes ☒No

54. Vehicle Information	Year	Make	Body Type	Color	Reg. Number and State	Other Descriptive Information — VIN
N/A ☐Owned ☐Used						

BAIL HEARING

55. Date	56. Court	57. Judge Setting Bail

58. Amount Bail	59. Results of Hearing	60. Code	61. Place Committed / Detained
	☐Released on Bail ☐R. O. R. ☐Committed in Default ☐Committed W/O Bail		

FINAL DISPOSITION

62. Date	63. Court	64. Judge
	Case to be heard in New York Juvenile Court.	

65. Disposition	66. Code	67. T.O.T.	68. Sentence	69. Code
☐Guilty ☐Dismissed ☐Lesser Offense ☐Acquitted		☐Yes ☐No		

JUVENILE INFORMATION

70. Parent/Guardian/Probation — Contacted By	71. Date Contacted	72. Time Contacted	73. Released to/Detained at
Det. J.J. McGovern #3796	6-23-88	2:45 ☐AM ☒PM	Mitchell Dickman

74. Full Address — Number — Street — Municipality — State — Zip Code	75. Phone Number (Area)	76. Date	77. Time
17 Glenn Dr. Woodbury, N.Y.	516-921-2114	6-23-88	3:00 ☐AM ☒PM

78. Parent/Guardian's Name (First) (Middle) (Last)	79. Full Address — Number — Street — Municipality — State — Zip Code	80. Phone No. (Area)
Marty Rosenblum	96 Belmont Circle Syosset, N.Y. 11719	212-593-1099

81. Co-defendants	82.	83.	84.	85.	86.	87. UCR — A.S.R. Reporting Mon.
1						105

88. Narrative/Additional Charges

Accused was observed playing Blackjack underage in casino. Subject had several false licenses in possession. Subject released to above at the request of his father listed.
Subject had $25.00 in gaming checks in possession. Add. Address: 7 Aron Ct. Wayside, NJ 07712

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT
RICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625

Data Entry - CO2-88138
IR: 88-974

RECEIVED

JUL 14 1988

CASINO GAMING SECTION

MEMORANDUM

TO: Captain Fred V. Morrone, Supervisor, Casino Enforcement Section

FROM: Det. J.J. McGovern #3796, via DSFC. Barry J. Rover, Supervisor, Atlantis Casino

SUBJECT: UNDERAGE GAMBLERS (JUVENILE & ADULT)

DATE: July 12, 1988

On June 23, 1988 the undersigned observed two subjects playing Blackjack at Bally's Park Place Casino. Both appeared to be underage so identification was requested by this writer. The subjects stated they were 21, however could not prove it. Subjects were taken to the D.G.E. office where they admitted they were 18 & 17 years old. Subjects were arrested and processed. During processing false licenses and identifications were found on their possession therefore, they were also charged with that offense. The following confirmed information was received from the accused.

MITCHELL SCOTT DICKMAN
17 Glenn Drive
Woodbury, NY
DOB: 6/8/70, 18 yrs.

MATTHEW HAYDEN ROSENBLUM
96 Belmont Circle
Syosset, NY
DOB: 12/18/70, 17 yrs.

The subjects were questioned as to which entrance they used to come in, how long were they gambling and did they use their false ID's to enter the casino. The reply was they entered through the Park Place Street entrance. They just sat down to play and only played approx. two hands of BJ. Dickman had $95.00 in checks and Rosenblum had $25.00 in checks. The subjects further stated they did not use their false ID to enter the casino, because the guard did not check.

This writer checked the schedule for security at the casino and learned that the guard on duty at 2:00PM which is the approx. time the accused stated they entered the casino, was S/O Lawrence Borski Lic. #13641-21. S/O Borski was interviewed and stated that he did not remember seeing the subjects enter the casino through his post.

Interviews of all personnel at BJ Table 2A-201 were conducted by Det. J. Cordy. The following employees were questioned about the incident. Floorperson John Falco stated, he did not notice the subjects before the incident. Dealer Nemesia Ledford Lic. #62365-21, stated, she remembers the incident, but not the two individuals involved. There were two empty spots on the table and she really didn't look at their faces.

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Submitted for your information.

EXHIBIT A

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-114
LICENSE NO. 3745-21
REGISTRATION NO. 90188-40
OAL DOCKET NO. CCC 05724-89
ORDER NO. 90-12-3

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

Complainant,

v.

ROBERT A. BARNES,

Respondent.

ORDER

A hearing 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; and the Commission having considered the entire record of these proceedings at its public meeting of March 21, 1990,

IT IS on this 22nd day of March 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the order dated December 6, 1988, which suspended the respondent's casino employee license is vacated; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5724-89
AGENCY DKT. NO. 89-114

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
ROBERT A. BARNES,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Alfred J. Bennington, Jr., Esq., for respondent (Bennington and Williams)

Record Closed: February 8, 1990 **Decided:** February 13, 1990

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

This matter arises out of a complaint filed by petitioner with the Casino Control Commission seeking 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. A hearing was conducted on January 29, 1990, and the record closed on February 8, 1990, after the receipt of information previously unavailable.

The questions presented are whether respondent engaged in conduct which constitute the offenses of conspiracy, N.J.S.A. 2C:5-2, and theft by unlawful taking, N.J.S.A. 2C:20-3, automatic disqualifiers under the Casino Control Act even if unprosecuted, N.J.S.A. 5:12-86c, g; whether his continued licensure would be

inimical to the policy of the Act and to casino operations; whether respondent can establish good character by clear and convincing evidence, N.J.S.A. 5:12-89b(2), N.J.S.A. 5:12-90b, and if the charges are founded, whether he has been rehabilitated, N.J.S.A. 5:12-90h.

Certain facts are undisputed. This matter concerns an ongoing scheme to steal gaming cheques at the Tropicana Hotel and Casino which involved one or more dealers, floor persons and pit bosses. Simply enough, a dealer would drop a purple cheque, valued at $500, onto the floor and a floor person would pick it up and secret it in his jacket. The proceeds were later divided. Investigatory authorities received a tip concerning this scheme on May 27, 1988, and thereafter surveilled the table and pit in question until June 21, 1988, when the fact of the investigation was prematurely disclosed. Respondent does not appear on any of the video tapes taken during this period. The only evidence linking him to this scheme results from a statement given by Robert D. Delaney, a dealer, after his arrest in connection with this matter on June 22, 1988. Detective Sergeant John Burns who conducted the interview was informed by Delaney that respondent was involved in this operation on one occasion, sometime in April 1988. Delaney also gave testimony before the Grand Jury to the same effect. During this testimony he acknowledged a drug and alcohol abuse problem. Mr. Delaney had a small amount of cocaine in his possession when he was taken into custody. Delaney also implicated other individuals, and the parties appeared to agree that Mr. Wayne F. Fairfield, a dual rated pit boss, created the scheme. Respondent's license is presently suspended.

Respondent testified in his own behalf. He is 32 years old and is now a door person at Harrah's. He has lived in the Atlantic City area for some 15 years and has worked in various hotels since the inception of casino gambling. Other than this incident, no disciplinary proceedings have ever been brought against him, nor has he ever been accused of a crime. He has had good evaluations from supervisors over the years. Respondent denied any involvement in this scheme, and testified that the episode has derailed his career and caused him to suffer personally.

Respondent testified that as a floor person he supervised Mr. Delaney many times and had difficulty with him. At times it appeared that Delaney was under the influence of drugs and he reported this to his superiors. Mr. Delaney did eventually enter a 90-day drug rehabilitation program.

Respondent testified that he accepted pretrial intervention upon the advice of counsel because of the expense of a trial, and because it was not an admission of guilt. He performed 100 hours of community service at his church. He was never asked to testify against any of the others involved in this offense.

Respondent presented a series of character witnesses who testified as to his reputation for honesty and integrity in the local community and in the casino industry. This is the substance of the record.

Petitioner's entire case rests on the hearsay statement of Mr. Delaney which came into evidence through Sergeant Burns and in the record of Grand Jury proceedings. Mr. Delaney was an admitted conspirator, a drug user and someone who from this record, may have had motive to implicate respondent. While hearsay is admissible in these proceedings without the usual residuum requirement, St. Dept. of Law & Public Safety v. Merlino, 216 N.J. Super. 579 (App. Div. 1987), aff'd 109 N.J. 134 (1988), findings must nevertheless be supported by evidence "upon which responsible persons are accustomed to rely in the conduct of serious affairs, . . ." N.J.S.A. 5:12-107a(6). The quality of evidence presented does not meet this standard, and petitioner has not established its charge by a preponderance of the credible evidence. I take no inference from the fact that respondent undertook a program of pretrial intervention as it appears that no admission of involvement was required of him. See, R. 3:28, Guideline 4. Respondent himself was credible and he denied any role in the incident. Based on this denial and on an unblemished record both prior to and since the incident, as well as upon the character testimony of numerous persons who have worked with him and known him over many years, it is my **CONCLUSION** that he has established that he continues to possess the good character, honesty and integrity which first caused the Commission to license him. I do not proceed to a discussion of rehabilitation, and it is **ORDERED** that respondent's license be reinstated.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

2/13/90
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

2/13/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 14 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

ml/E

WITNESSES

Detective John Burns
Paul C. Heiser
John Totoro
Salvadore Perice
Anthony Limone
Susan K. Bucci
Lynne A. Barnes
Joel M. Fleishman
Robert A. Barnes
Nathen Edwards

EXHIBITS

For petitioner:

P-1	Statement of Robert D. Delaney
P-2	Atlantic County Grand Jury Indictment #88-08-2206-C

For respondent:

R-1	New Jersey State Police Investigation Report, dated June 22, 1988
R-2	Grand Jury transcript of August 24 and 31, 1988
R-3	Character reference, dated January 31, 1990
R-4	Employee evaluation, dated May 9, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-256 and 89-CSI-1
APPLICATION NO. 2707-70
VENDOR I.D. NO. 20420
OAL DOCKET NOS. 1445-87 and 6234-88
ORDER NO. 90-17-16

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

Complainant,

v.

BAYSHORE REBAR, INC., AND JOSEPH N. MERLINO

Respondents.

AND

APPLICATION OF BAYSHORE REBAR, INC., FOR A CASINO SERVICE INDUSTRY LICENSE:

ORDER

The Casino Control Commission having denied Bayshore Rebar, Inc.'s application for licensure as a casino service industry at its public meeting of April 5, 1989, based on a disqualification pursuant to N.J.S.A. 5:12-86(f); and the Commission having deferred consideration of the issues of Bayshore Rebar, Inc.'s alleged disqualification pursuant to N.J.S.A. 5:12-86(c)(1) and N.J.A.C. 19:43-1.3(c) pending the outcome of the criminal matter involving Joseph N. Merlino; and the Commission having been notified that the criminal matter has been completed; and Bayshore Rebar, Inc., having failed to request a hearing on the remaining issues; and the

Commission having considered the remaining issues at its public meeting of April 25, 1990,

IT IS on this 9th day of May 1990, ORDERED that Bayshore Rebar, Inc., and Joseph N. Merlino are further disqualified based upon their constructive admission pursuant to N.J.S.A. 5:12-108(d) of the matters and facts contained in the Division's letter-report, complaint and amendment to its complaint pertaining to N.J.S.A. 5:12-86(c)(1) and N.J.A.C. 19:43-1.3(c); and

IT IS FURTHER ORDERED that the effect of the additional disqualifications is retroactive to the Commission's determination to deny Bayshore Rebar, Inc.'s application rendered at the Commission's public meeting of April 5, 1989.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly BB
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-256 and 89-CSI-1
APPLICATION NO. 2707-70
VENDOR I.D. NO. 20420
OAL DOCKET NOS. CCC 1445-87 and 6234-88
ORDER NO. 89-17-21

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

Complainant,

v. ORDER

BAYSHORE, REBAR, INC. AND JOSEPH N. MERLINO

Respondents,

AND

APPLICATION OF BAYSHORE REBAR, INC. FOR A CASINO SERVICE INDUSTRY LICENSE.

The Casino Control Commission having heretofore denied the application of Bayshore Rebar, Inc. for a casino service industry license by order dated April 10, 1989; and the applicant having filed a motion for stay pending appeal; and the Division of Gaming Enforcement having opposed the applicant's motion; and the Commission having considered the oral argument of counsel at its meeting of April 26, 1989,

IT IS on this 26th day of April 1989, ORDERED that the applicant's motion for a stay pending appeal is denied.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-256 and 89-CSI-1
APPLICATION NO. 2707-70
VENDOR I.D. NO. 20420
OAL DOCKET NOS. CCC 1445-87 and 6234-88
ORDER NO. 89-14-18

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

Complainant,

v. ORDER

BAYSHORE, REBAR, INC. AND JOSEPH N. MERLINO

Respondents,

AND

APPLICATION OF BAYSHORE REBAR, INC. FOR A CASINO SERVICE INDUSTRY LICENSE.

A hearing 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 exceptions and a reply to exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of April 5, 1989,

IT IS on this 10th day of April 1989, ORDERED that the initial decision is modified as follows:

> to find, for essentially the reasons cited by the ALJ as to the company, that the qualifiers of Bayshore Rebar, Inc., Joseph N. Merlino and Phyllis Mistie Merlino, are disqualified pursuant to N.J.S.A. 5:12-86(f)..

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that, except as otherwise provided herein, Bayshore Rebar Inc. and its qualifiers, Joseph N. Merlino and Phyllis Mistie Merlino, are prohibited from conducting any business, directly or indirectly with, or from supplying any goods or services to, any casino licensee or applicant or to any person acting on behalf of a casino licensee or applicant until further order of this Commission; and

IT IS FURTHER ORDERED that any existing agreements, whether written or unwritten, between Bayshore Rebar, Inc. and any casino licensee or applicant or employee or agent acting on behalf of a casino licensee or applicant be terminated within fifteen (15) days of the date of this order; and

IT IS FURTHER ORDERED that Joseph N. Merlino and Phyllis Mistie Merlino are prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 1445-87 and
CCC 6234-88
AGENCY DKT. NOS. 87-256 and
89-CSI-1
(CONSOLIDATED)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
BAYSHORE REBAR, INC./
JOSEPH N. MERLINO,
Respondent,
and

IN THE MATTER OF THE APPLICATION
OF BAYSHORE REBAR, INC., FOR A
CASINO SERVICE INDUSTRY LICENSE

Stephen J. Cirillo, Deputy Attorney General, and **Julia McClure,** Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Francis J. Hartman, Esq., and **Charles H. Nugent, Jr.,** Esq., for respondent

Record Closed: November 21, 1988 Decided: December 20, 1988

BEFORE **RICHARD J. MURPHY**, ALJ:

STATEMENT OF THE CASE

At issue is whether Bayshore Rebar, Inc., a reinforced concrete construction ("rebar") company operating primarily in Atlantic City, is disqualified under the Casino Control Act, L. 1977, c. 110; N.J.S.A. 5:12-1 et seq., from doing business with casino applicants and licensees because of the allegedly inimical association of its officers with a member of organized crime contrary to N.J.S.A. 5:12-86f, and whether it should be denied a license as a casino service industry pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:43-1.1 et seq. Both sides see this as a case of family ties: the Division of Gaming Enforcement (Division) alleges that the respondent has an inimical association with the crime family of Nicodemo Scarfo through one of its members, Lawrence Merlino, a/k/a Lawrence "Yogi" Merlino, who is the father of Bayshore's vice-president and former president as well as ex-husband of its current president; Bayshore Rebar, Inc. (Bayshore), claims that its only association with Lawrence Merlino is purely incidental to constitutionally protected family bonds formed through blood and marriage and that these alone may not provide a basis for disqualification or denial of a license under the Casino Control Act and Commission regulations.

PROCEDURAL HISTORY

The Division filed its initial complaint in this matter with the Casino Control Commission (Commission) on January 6, 1987, alleging various connections between Bayshore and its officers and owners and Lawrence Merlino, an admitted career criminal offender and a member of a career offender cartel headed by Nicodemo Scarfo. Joseph Merlino, former president of Bayshore, requested a hearing on February 11, 1987, and the matter was transmitted to the Office of Administrative Law on March 5, 1987, for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The Division filed an amended complaint with the Commission on May 6, 1987, seeking to disqualify respondent Joseph N. Merlino from vendor registration under N.J.S.A. 5:12-104b because of his indictment on March 17, 1987, in Atlantic County on charges of aggravated assault, aggravated assault with a deadly weapon, and possession of a deadly weapon for unlawful

purposes. These criminal charges are still pending. The parties initially agreed to hold proceedings on the amended complaint in abeyance pending resolution of the criminal charges, but, as these charges were not rapidly resolved, it was determined to be more advisable to proceed to hearing on the allegations of the original complaint, and a prehearing to this end was held on November 17, 1987, with a prehearing order issued the next day. Decision on the unrelated criminal charges was deferred, pursuant to N.J.S.A. 5:12-86d, during the pendency of that charge. The hearing on the original complaint was scheduled for January 7, 1988, but this date was adjourned at the respondent's request due to the unavailability of counsel. The hearing was conducted on March 14, March 29 and March 31, 1988. After the completion of the hearing, additional documentation was submitted by respondent on April 7, 1988, with a ten-day reply period allowed to the Division. Before expiration of the time period for submission of an initial decision, the Division advised that it intended to move to reopen and supplement the record by submission of a sworn affidavit by Thomas A. DelGiorno. Bayshore filed a letter brief in opposition on July 5, 1988. On July 22, 1988, the record was reopened and the Division was ordered to produce Thomas A. DelGiorno for testimony; the respondent was directed to have Lawrence Merlino testify. Because of a pending federal criminal matter in which both men were involved, this could not be arranged and it was determined, on August 19, 1988, to admit the proposed affidavit from Thomas DelGiorno. Bayshore was also given an opportunity to submit an opposing affidavit from Lawrence Merlino, and did so.

On July 29, 1988, Bayshore applied to the Commission for licensure as a casino service industry pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:43-1.3 et seq. The Division objected and argued that the applicant was disqualified on the grounds of its association with Lawrence Merlino, as well as the indictment of Joseph N. Merlino and by what the Division characterizes as misrepresentations by the applicant's principals in the course of the hearing in this matter. The matter of the application was transmitted to the Office of Administrative Law for hearing as a contested case with a request that it be consolidated with the pending matter in OAL DKT. CCC 1445-87. Consolidation was granted and the parties rested on the evidence introduced in the previously-filed casino control matter, which had been heard in March.

On September 7, 1988, Bayshore submitted an affidavit by Lawrence Merlino, responding to that previously submitted by Thomas DelGiorno. On September 21, 1988, the Division submitted an affidavit of Division Agent Barbara Friese and excerpts from reports of the Pennsylvania Crime Commission. On November 4, 1988, Bayshore forwarded sections of a transcript from a trial in United States District Court, Eastern District of Pennsylvania, entitled United States of America v. Nicodemo Scarfo, et al; in which the testimony of Thomas DelGiorno as to Bayshore and Lawrence Merlino was featured. The Division submitted a responsive argument on November 21, 1988, and the record as to the consolidated matter was closed on that date. The matter of the indictment pending against Joseph Merlino remains to be determined through criminal proceedings and is not dealt with in this decision.

FINDINGS OF FACT

The following material facts are not in dispute. Bayshore stipulated that Lawrence Merlino is a career criminal offender within the meaning of N.J.S.A. 5:12-86f and N.J.A.C. 19:48-1.1, as well as an associate of career criminal offenders and a member of a career criminal offender cartel. Specifically, Lawrence Merlino is an associate of Nicodemo Scarfo, the acknowledged head of an organized crime family operating out of Philadelphia in southern New Jersey and the Atlantic City area. Official notice is taken that, on November 19, 1988, Lawrence Merlino was convicted on a number of federal criminal charges in the matter of United States of America v. Nicodemo Scarfo, et al., U.S. District Court Criminal No. 88-003. Also convicted were Lawrence Merlino's brother Salvatore Merlino; his nephew, Phillip Leonetti; Nicodemo Scarfo, and others. The Merlino brothers are known to be members of the Scarfo crime family, with Salvatore Merlino functioning as an underboss, and Lawrence Merlino and Phillip Leonetti serving as soldiers within that organization. Lawrence Merlino's association with Nicodemo Scarfo goes back to at least 1979 when the two, along with Phillip Leonetti, were charged with the murder of Vincent Falcone, an Atlantic City cement contractor. The three were subsequently acquitted. Lawrence Merlino also has worked as president and part owner, of Nat Nat, Inc., a construction company in Atlantic City. He has also worked for Scarf, Inc., a construction company owned by Nicodemo Scarfo's nephew, Phillip Leonetti.

Because of his status as a career offender and an associate of a career offender, Lawrence Merlino was barred from casino premises by the Commission and this exclusion was affirmed. See, State v. Lawrence Merlino, 216 N.J. Super. 579 (App. Div. 1987), affirmed, State v. Merlino, 109 N.J. 134 (1988). Lawrence Merlino is currently incarcerated in Pennsylvania awaiting trial on other charges.

There is also no dispute that Lawrence Merlino was president of Nat Nat, Inc., a reinforced steel construction company, at the time of the incorporation of Bayshore Rebar in December of 1985. He had incorporated a company called Bayshore Rebar, Inc., in Florida prior to that time, which corporation was involuntarily dissolved on November 1, 1985, for failure to file its annual report (P-32). Prior to 1985, Nat Nat operated out of offices at 28 North Georgia Avenue, Atlantic City, which was the same address used by Scarf, Inc., a construction company headed by Phillip Leonetti, nephew of Nicodemo Scarfo and a career offender, as discussed above. The operations of Nat Nat were later moved to a home located at 15 North Decatur Avenue in Margate, which Lawrence Merlino had purchased for his former spouse and children. Lawrence Merlino did not at any time reside at that address but occasionally visited his children there, as well as to check on the affairs of Nat Nat, which were being handled by his daughter, Kimberly.

Joseph N. Merlino is the son of Lawrence Merlino and is currently 21 years old. At the time of the filing of the Division's original complaint, he was designated as president and sole owner of Bayshore Rebar, Inc. By the time of the hearing in this matter he no longer held that office, which had been assumed by his mother, although he was still vice-president and was principally employed by it in the construction rebar business. His ownership share had also been reduced to twenty-five percent, with his mother holding the rest. The "rebar" business involves the placing of steel rods at building contruction sites prior to the pouring of concrete so that the building cement structure will be reinforced with steel. Bayshore has worked on a number of casino sites in Atlantic City. Lawrence Merlino holds no office in the company and there is no evidence that he holds any interest in it or that he has been employed by it in any capacity. There is also no evidence that Lawrence Merlino has received any monies from Bayshore or, for that matter, from Joseph Merlino or Phyllis Mistie, his former spouse and the mother of his

five children. The Division also has offered no evidence showing any payments by Bayshore or Joseph Merlino to Nicodemo Scarfo, Salvatore Merlino, Phillip Leonetti or anyone else associated with the reputed Scarfo crime family, nor has any other evidence been offered to demonstrate business or personal dealings between Bayshore or its principals and Scarfo, Leonetti, and Salvatore Merlino, beyond Joseph Merlino's prior employment with Scarf, Inc., and Nat Nat, Inc.

There is no dispute as to the above facts and I so **FIND.**

The Division offered an affidavit signed by one Thomas Albert DelGiorno, an acknowledged former member of the Scarfo crime family who has testified against its members, including Lawrence Merlino, in a number of proceedings (See, P-48). DelGiorno states in his affidavit, which I set forth in full, that:

> 1. I am currently in protective custody in an undisclosed location. I currently face criminal charges for various criminal offenses and have testified for the federal government and the States of New Jersey and Pennsylvania in various criminal matters of which I have knowledge. It is my understanding that I will be provided no favorable treatment as a result of the information provided in this affidavit, nor have I been provided any other inducement for the provision of this information, such as a reduced sentence, defferal or dismissal of charges, or any other promised act in my benefit.
>
> 2. I first met an individual known as Lawrence Merlino in 1972. Lawrence Merlino was also known to me and others as Lawrence "Yogi" Merlino. Since that time, I have met with, and engaged in matters of mutual interest with Lawrence Merlino on numerous occasions. To my knowledge, Lawrence Merlino is currently in a Pennsylvania jail awaiting trial.
>
> 3. I was a fully-initiated member of an Organized Crime family headed by an individual known as Nicodemo Scarfo. I was initiated into this organization in January 1982. Furthermore, I also know that Lawrence Merlino is a fully-initiated member of the Scarfo Organized Crime family. Lawrence Merlino was initiated in the Scarfo Organized Crime family in the spring of 1980. Lawrence Merlino was promoted to the rank of captain in the Scarfo Organized Crime family in 1982.

4. During the approximate period 1982 through 1986, Lawrence Merlino spoke with me directly and personally on numerous occasions concerning various developments in certain business interests held by Lawrence Merlino, including the construction activities of certain rebar companies operating in Atlantic City, New Jersey. Lawrence Merlino is the father of an inidividual known as Joseph Merlino of Atlantic City. Lawrence Merlino informed me of a rebar company operating in the Atlantic City area by the name of Bayshore Rebar, which was the first mention of that company I heard.

5. With regard to rebar construction contracts, Lawrence Merlino informed me that it was his practice to obtain various rebar jobs in and around Atlantic City and to utilize Bayshore to actually perform the work and to receive payment for the work. Lawrence Merlino also informed me that he shared the money obtained from the Bayshore Rebar operations with Bayshore.

6. Lawrence Merlino informed me that he conducted operations in the above-described manner with Bayshore because he, Lawrence Merlino, felt he could not operate in his own name in Atlantic City due to his reputation as a member of Organized Crime. Lawrence Merlino informed me that he believed the authorities would never allow him to operate directly with casinos and other companies due to his reputation as a member of Organized Crime. For this reason, Lawrence Merlino also believed that he could not operate in the name of his own company, Nat-Nat, Inc. For these reasons, Lawrence Merlino told me he utilized Bayshore Rebar.

7. I make this affidavit at the request of the New Jersey Division of Gaming Enforcement, which agency I understand has charged that Lawrence "Yogi" Merlino is associated with Bayshore Rebar, Inc., and persons within that company. It is my testimony here that Lawrence "Yogi" Merlino is associated with Bayshore Rebar, Inc., as I have set forth above (emphasis added. [P-50]

Bayshore submitted an opposing affidavit from Lawrence Merlino, which is also set forth in full:

1. I have read the affidavit of Thomas Albert Del Giorno in support of the Division of Gaming Enforcement's application for suspension of Bayshore Rebar, Inc., and make this affidavit in response to the allegations contained within Mr. Del Giorno's affidavit.

2. In regards to the allegation of Mr. Del Giorno that I discussed with him a rebar company operating in the Atlantic City area by the name of Bayshore Rebar, Inc., I had never discussed such company with Thomas Del Giorno. Further, I never informed Mr. Del Giorno that it was my practice to obtain various rebar jobs in and around Atlantic City, nor did I inform Mr. Del Giorno that I actually utilized Bayshore Rebar to actually perform the work and to receive payment for the work. Also, I have never received or shared in any monies obtained by Bayshore Rebar operations with Bayshore or Joseph Merlino.

3. Nor have I ever informed Mr. Del Giorno that I conducted operations using Bayshore Rebar because I felt that I could not operate in my own name due to my reputation.

4. Those allegations of Mr. Del Giorno regarding Bayshore Rebar are not true, and I submit this affidavit in response to the affidavit of Mr. Del Giorno. I further disavow and deny any association with Bayshore Rebar, Inc., other than that Joseph Merlino is my natural born child (emphasis added). [R-2]

At the recent trial in the matter of United States of America v. Nicodemo Scarfo, which resulted in the conviction of Lawrence Merlino, Salvatore Merlino, Phillip Leonetti and Nicodemo Scarfo on various federal criminal charges, Thomas DelGiorno testified on behalf of the government and was questioned concerning the above affidavit. The following excerpt of transcript is taken from the cross-examination of Thomas DelGiorno:

Q Mr. DelGiorno, I return to you the affidavit that I asked you to read yesterday, did you have an opportunity to read it yesterday before we broke for the day?

A Yes.

Q I had started to ask you some questions with respect to the procedure and the circumstances under which you took this affidavit. You may be repeating some answers, but woul you please tell the members of the jury, under what circumstances it came about that you were asked to take this affidavit and how was the affidavit formulated?

A It's whoever they are from the State of New Jersey —

Q I'm sorry. Could you speak a little clearer.

A I said, whoever took this from the State of New Jersey asked me about Larry's involved in Nat-Nat.

Q Well, let me see if I understand something and correct me if I'm wrong. Somebody from the State — and you've already told us that you were escorted by Federal authorities to a meeting with some people from the State of New Jersey; is that correct?

A Correct.

Q And those people, whoever they are, was it one person or more than one person?

A I think there was more than one.

Q They interviewed you and asked you to tell them what you knew about Larry, meaning Lawrence Merlino, correct?

A Right.

Q Involvement with a company in Atlantic City by the name of Nat-Nat, that Lawrence Merlino had something to do with; is that correct?

A Correct.

Q Okay, and you told them, I gather from the answer that you gave me, that you told them information about what you knew about Lawrence Merlino's involvement with Nat-Nat; is that correct?

A Correct.

Q Did they ask you any specific questions or did they just say tell us what you know about Nat-Nat? How did it come about? What were the questions, if you recall?

A I can't recall.

Q Well, the affidavit was notarized in June of 1988. I can read it, see, the June 25th, that's about three or four months ago, is it your testimony that you can't recall today what you were asked three or four months ago?

A This looks like a summary of it.

Q It looks like a summary of it?

A Yes.

Q Is it signed?

A Yes.

Q Didn't you read it before you signed it?

A Yes.

Q All right. Now, before I asked you any more questions, I want you to read the affidavit to the jury.

A Why don't you read it? There's a lot of big words there I can't pronounce.

Q Okay, fine. All right. I'll read it and if I misstate anything — I didn't mean to embarrass you but If I —

A You didn't embarrass me. It's just that it will be faster that way.

[The affidavit is read into the record.]

Q In that affidavit, and as I understand by your testimony that you read this before you signed it; is that correct?

A Yes.

Q Did you actually dictate the words or was it after a conversation that you had with whoever from the New Jersey Division of Gaming Enforcement, that they prepared the affidavit and brought it back to you for your signature?

A They prepared it and brought it back.

Q Now, you told us that — the members of the jury, a few moments ago, in response to one of my questions, that they, whoever the representatives were from the State of New Jersey, asked you about Nat-Nat; is that correct?

A Yes, yes.

Q Well, this entire affidavit is about Bayshore, isn't it?

A Yes.

Q Would it surprise you — now, did you also understand from the people from the State of New Jersey who spoke with you, that the reason they wanted this affidavit is so that Bayshore Construction, Bayshore Company, the company of Joseph Merlino,

the son of Lawrence Merlino, could not engage in casino construction, did they tell you that's the reason?

A They said to me, I explained to them that Larry had this place Nat Nat and he used other companies to get work down the shore, and that's all I explained to them. Okay.

Q Well, did they explain to you, as paragraph seven suggests, that the reason they wanted to talk to you, I mean, this wasn't really a law enforcement agency, in that nature of that word, that they were investigating Bayshore —

A Excuse me, I thought they were a law enforcement agency.

Q Okay. All right. They were a law enforcement agency. I'll agree with you, that their purpose was to get you to take an affidavit that Lawrence Merlino was somehow involved with Bayshore and was somehow getting money from Bayshore so that Joseph Merlino, the owner of Bayshore, could not engage in business with the casino industry, did they explain that to you?

A No, they didn't explain it that way.

Q Did you understand that?

A No. They didn't explain it to me that way.

Q They didn't explain that to you.

A I told them, as far as I knew, Joseph Merlino, Larry's son, had nothing to do, except was a worker, when I knew them. I don't know what he does now.

Q Well, is it the —

A That's what I explained to them.

Q Would you agree that this entire affidavit —

A They came back with this.

Q — and your indication in there, that you had spoken with Lawrence Merlino from 1982 through 1986, leaves one who reads it to believe that it has to do with Lawrence Merlino's involvement with Bayshore? [The Court rules on an objection.]

Q Somebody wrote the affidavit and you signed it?

A Yes.

Q Did you make any attempt to correct any of it?

A When I gave — [The Court rules on another objection.]

THE WITNESS: I explained that — again, I'll explain that I only knew what Larry did. I had no knowledge of what Joseph Merlino did. The only think I knew about Joseph Merlino is that he worked in a company. When I read this affidavit, to me it doesn't say that Joseph Merlino did anything wrong. It says, that Larry was involved in construction and that's what I thought I was signing, Larry. Joseph Merlino, as far as I know, worked in a rod company. He was a young kid and he never did anything wrong. I don't know what that's supposed to mean. I know what I took it to mean.

Q Well, did you know — did you tell them that you knew about Bayshore from 1982?

A No, I said that he used various companies. I said, one of the companies he used was a brother-in-law, an ex-brother-in-law and I didn't remember the name. And they said, was it Bayshore? I said, it could be Bayshore. I wasn't sure. Again, I said, I did not know what Joseph Merlino did and this doesn't say that Joseph Merlino did anything.

Q Is it your testimony then, that the name Bayshore Construction Company was a name that was sort of foreign to you and was suggested in response to a question from the New Jersey Division of Gaming Enforcement? Was it the Bayshore you said it could have been?

A I said, it could have been, yes.

Q And then you signed the affidavit where it says, Bayshore, doesn't it?

A Yes.

Q Well, did you say to them, hey, I'm not sure it was Bayshore?

A I read this affidavit and to me this affidavit doesn't accuse him of anything only that he was in the Rebar business, and I don't even know it was Rebar. I though it was ironwork business.

Q Whatever your thoughts were as to whether it accused anyone of anything, did you believe that when you signed the affidavit, which you took under oath, that what was conveying in the

affidavit, that you signed and it was notarized in your presence, was completely 100 percent the truth?

A As far as I'm concerned it was the truth, yes.

Q You just said that you didn't even know the name Bayshore until it was suggested to you, didn't you?

A No, I didn't say that. I said that he used other companies and they said was one of them Bayshore? I said it sounds like one of them, yes. Okay. Again, I signed the paper, still — it still to me doesn't say that he did anything wrong in this paper.

Q Okay, that's your feeling. Would it surprise you to know that Bayshore, the company in this affidavit, wasn't incorporated until December of 1985? [Objection ruled on by the Court.]

Q All right. Do you know Bayshore was incorporated?

A No, I don't.

Q Do you know whether or not from the time that you — during the period of time that you say that you had occasion to speak with Lawrence Merlino, whether Bayshore ever obtained a construction job with the casino industry or even more so, ever received any funds from the casino industry?

A Bayshore was incorporated when I spoke to Larry Merlino. Larry Merlino was under me in early '86 and he had to explain to me what jobs he had and how he was getting them. So, Bayshore was incorporated at the time I was speaking to him. So, when the guy said to me, is it Bayshore? I said, it could be. Larry was supposedly reporting the job that he was doing through me in early of '86. So, yes, if it was incorporated in '85 then I heard it in '85. I didn't know when it was incorporated.

Q But did Larry have to report to you when he got money from those jobs too?

A As far as he told me, he never got no money from the jobs.

Q Well, that's not what you said in the affidavit?

A He didn't get no money from the jobs when I was — when he was reporting to me. Larry didn't give me any money from the jobs.

Q Well, will you look at paragraph five of this affidavit, Mr. DelGiorno, just look at it? Do you want me to read it to you again?

A No, I'm reading it.

Q Does it say in there that Lawrence Merlino — [Objection ruled on by the Court.]

[The Court admonishes the attorneys]

Q All right. I apologize, Mr. DelGiorno, but does it take a bright person to read something and understand that it's not 100 percent accurate?

A Yes. . . . (emphasis added). [R-3]

As indicated, Lawrence Merlino and the other defendants were convicted on November 19, 1988, of all charges in the above federal matter. The federal government was unwilling to release Thomas DelGiorno for testimony in this matter. Lawrence Merlino did not testify in the federal criminal trial.

Based on DelGiorno's testimony in the matter of U.S. v. Nicodemo Scarfo et al., I **FIND** as a matter of fact that Thomas DelGiorno spoke to Lawrence Merlino after December of 1985 and was advised by him that he used various companies in Atlantic City to obtain construction jobs. I further find that there is insufficient believable evidence to find that Lawrence Merlino specifically mentioned Bayshore Rebar in his conversations with DelGiorno and also find that there is no evidence whatsoever that Lawrence Merlino received payments from Bayshore or its principals. Bayshore initially objected to the admission of DelGiorno's affidavit on the grounds that he was a "self-proclaimed murderer, perjurer, drug-dealer, racketeer and all around criminal" (Bayshore's letter brief of June 30, 1988, at 1). Although that may be an accurate statement of DelGiorno's resume, Bayshore also offered DelGiorno's testimony on cross-examination as set forth above. In that testimony, DelGiorno, while unsure as to whether Lawrence Merlino had specifically mentioned Bayshore, did recall with sufficient clarity that Merlino had stated that he used various construction companies to get jobs in Atlantic City and that he spoke to Merlino in early 1986 after Bayshore was incorporated. I therefore **FIND** that DelGiorno's statements on cross-examination in the Federal matter are, read together with his affidavit, sufficiently credible to support the above finding of fact.

The current president and 75-percent owner of Bayshore is Phyllis Mistie, a former spouse of Lawrence Merlino. The couple had five children, separated approximately 14 years ago and is now divorced. Lawrence Merlino purchased the home at 15 North Decatur Avenue in Margate in response to Phyllis Mistie's request that he provide a place for her and the children to live. She stated that he sometimes visited the children at that address and she acknowledged that Nat Nat, Inc., was operated from the family home. Lawrence Merlino also obtained work for his eldest son, Joseph Merlino: first, five years ago, a summer job in construction with Scarf, Inc.; and later, regular full-time employment with Nat Nat, Inc. Ms. Mistie also testified that her daughter Kimberly worked as a secretary for Nat Nat at the 15 North Decatur Avenue address and that Lawrence Merlino transferred Nat Nat's business to that address from 28 North Georgia Avenue in Atlantic City after Kimberly had a child. Phyliis Mistie claimed that she had a difficult time at first living in Atlantic City with her former husband and that she was something of a "nervous wreck" (1T,148). She stated that Joseph Merlino decided to go into business for himself; he incorporated Bayshore Rebar, Inc., and began to operate the business out of the 15 North Decatur address. She acknowledges that Bayshore and Nat-Nat use the same insurance agent, C.J. Adams, and she conceded that Lawrence Merlino had paid phone bills for the 15 North Decatur address, including calls made for Bayshore, on several occasions (1T,153,164). Phyllis Mistie claims that prior to July 1986, she worked briefly as a secretary for Bayshore but held no office or interest (1T121, 6-25). Although Ms. Mistie appeared to understand the nature of the company's business in a general sense, she was uncertain as to details of the work and unfamiliar with the scope of the company's involvement in at least one rebar job being done on a bridge (1T 119). Ms. Mistie also claims that she had no indication that Lawrence Merlino was exercising any influence over Bayshore or Joseph Merlino, and stated that ". . . my son wouldn't listen to anything he says. His son knows more than his father" (1T151, 22-23).

Joseph Merlino concedes that his father did get him a summer and weekend job five years ago with Scarf, Inc., which is owned and operated by the nephew of Nicodemo Scarfo, Phillip Leonetti. Joseph Merlino also admits that he later worked for Nat Nat, Inc., which was operated by his father and formerly by his uncle, Salvatore Merlino, who is reputed to be the underboss of the Scarfo crime family. In the course of working for Nat

Nat, Joseph Merlino met Nat Nat foreman Rocco Bunodono and Nat Nat's bookkeeper, Joseph Golatto and both of these men later provided professional services to Bayshore. Even after Bayshore had been established in December 1985, Joseph Merlino continued to receive payments from Nat Nat. On or about March 10, 1986, he received a $15,000 check from Lawrence Merlino, president of Nat Nat, which check was characterized as a 1985 bonus check (P-40). In 1984, he had also received another bonus of approximately $37,000 from his father for work performed for Nat Nat (P-39). In March 1986, Joseph Merlino purchased a condominium in Margate from Lawrence Merlino, a condominium which Nat Nat had previously purchased from Scarf, Inc. (P-34 to P-39). Joseph Merlino discussed this purchase with his father and claims that he sought to acquire the condominium for investment and tax shelter purposes (2T 226). There is no evidence that this condominium played any part in the operation of Bayshore or that the purchase of the property was in any way improper or irregular. There is also no evidence of any further bonuses paid to Joseph Merlino from Lawrence Merlino and Nat Nat subsequent to 1986. Joseph Merlino also claimed, and the Division did not dispute, that some of the bonus monies were used by him to repay existing loans from Nat Nat (2T 239), and that part of the 1986 bonus was applied to the down payment for the condominium. After leaving employment with NatNat in 1985, Joseph Merlino worked as a general foreman in construction with the United Carpenters of Glennside, Pennsylvania, and later for G&H Steel and M&M Construction.

Bayshore Rebar, Inc., of New Jersey was incorporated on December 13, 1985, listing Joseph N. Merlino as incorporater and Director, and it was located at 15 North Decatur Avenue in Margate (P-29). Joseph Merlino's sister Kimberly also worked for Bayshore when the company was located at 15 North Decatur Avenue. Since that time, the company, as well as the family, has moved to a ventnor address which was purchased by Joseph Merlino and in which Lawrence Merlino has no proven financial interest. Joseph Merlino is also no longer president of the company but continues to serve as vice-president and part owner. He claims that this change was necessary to enable him to receive his journeyman papers. At the time of hearing, Phyllis Mistie was functioning as Bayshore's president. Rocco Bunodono, formerly a foreman for Nat Nat and a long-time friend of Lawrence Merlino, has been Bayshore's foreman since March

1986 and has played an instrumental role in the company, including filing an application for a construction contractor's license on its behalf in September 1986 after Joseph Merlino's application had been rejected because of his comparatively tender age (P-10).

Joseph Merlino testified and confirmed his mother's account of the origins and operation of Bayshore, as well as his prior experience with Scarf, Inc., and Nat Nat, Inc. Neither Phyllis Mistie nor Joseph Merlino contest the factual allegations set forth in the Division's complaint of January 6, 1987, although they claim, and the Division does not dispute, that Bayshore has since moved its operations and changed its officers, as discussed above. In a statement given to the Division on November 20, 1986, Joseph Merlino acknowledged that he had occasionally consulted with Lawrence Merlino as to Bayshore matters and, in particular, had asked him whether a contractor named Feriozzi, with whom Bayshore was doing business, was a "nice guy" who "pays his bills" and is "a good payer" (P-31 at 22, 23, 26). Joseph Merlino denies that Lawrence Merlino has gotten any jobs for Bayshore and the Division offers no direct evidence proving otherwise, with the exception of the above testimony of Thomas DelGiorno.

Phyllis Mistie further denied that the company had received any loans from Lawrence Merlino or made any payments to him. She stated that the family moved some eight months ago to a house in Ventnor which Joseph Merlino purchased and from which Bayshore now operates. Nat Nat continues to operate from the 15 North Decatur address and Kimberly Merlino is still employed in that business. Ms. Mistie testified that she became president and 75 percent owner of Bayshore approximately six months before the hearing in this matter because Joseph Merlino wanted to qualify as a journeyman and felt that he was precluded from doing this while serving as president. She stated that he was still serving as vice-president, as of the hearing (1T 115). She also claimed that an additional motive for her assuming the presidency of Bayshore was to qualify the company for minority work under affirmative action guidelines (T1 116). An insurance agent for C.J. Adams, Deborah Wehran, who handled insurance for both Bayshore and Nat Nat, testified that she had discussed Nat Nat with Phyllis Mistie whenever her daugther was absent or otherwise unavailable and noted that Phyllis was listed as a contact for Nat Nat (2T 207 - 19)(P-25). She also claimed that Phyllis Mistie had explained that she was not employed by or part of Nat Nat.

Neither Phyllis Mistie nor Joseph Merlino disputes the allegations made by the Division in its complaint. Joseph Merlino denied that the name Bayshore Rebar, Inc., which had previously been used by his father to incorporate a Florida company, was adopted at Lawrence Merlino's suggestion.

One of the first construction jobs obtained by Bayshore was from cement contractor Joseph Feriozzi, who was involved in construction of a parking garage at Resorts International Hotel and Casino in 1986. Ferriozzi was one of the two big contractors in Atlantic City at the time. Bunodono was working on the job, which was being performed by C.J.S. Co., a structural construction firm. Because C.J.S. was not a rebar company and consequently was having some difficulties adequately manning the job (1T 66; 2T 100-02), Feriozzi was unhappy with its performance on the job. Joseph Merlino claims that he became aware of C.J.S.'s problems on the job through Feriozzi's complaints to a "street man," who was responsible for recruiting workers on construction projects. Joseph Merlino asked Feriozzi if Bayshore could take over the job. Rocco Bunodono was present when this request was made. Feriozzi agreed and Merlino asked Bunodono, whom he had known from working with Nat Nat, Inc., to serve as foreman on the completion of the Resorts parking garage. Feriozzi agreed to pay Bayshore on a bi-monthly basis, which was a somewhat usual arrangements but Feriozzi consented because Bayshore was a relatively new company (2T 83,6-25). Bayshore offered a certification from Feriozzi, who also testified, which stated the following:

> 8. Bayshore Rebar has been the low bidder on a number of projects including Bally's Park Place and the Tropicana Hotel and has done sub-contracting work on these projects for L. Feriozzi Concrete. Additionally, Bayshore Rebar has sub-contracted at Resorts International Garage after the default of another contractor.
>
> 9. The hard work, diligence and quality of work exhibited by Joseph Merlino and Bayshore Rebar is exceptional.
>
> 10. I have found, through my dealings with Bayshore Rebar, that Joseph Merlino is a dedicated and sincere individual. He is a person of good character, honesty and integrity.
>
> 11. I have no perception or belief that respondent, Bayshore Rebar, or its President, Joseph Merlino, is in any way

> involved or associated with organized criminal activity or Lawrence Merlino.
>
> 12. Furthermore, I have no perception that respondent, Bayshore Rebar, or its President, Joseph Merlino, is a "front" for organized criminal activity or Lawrence Merlino. [R-7]

Feriozzi also certified that he has not been the subject of any charges, indictments or accusations in his forty years of doing construction business in Atlantic City. Nat Nat had been previously employed by Feriozzi on a variety of casino jobs. This working relationship was interrupted in 1979 when Lawrence Merlino was accused, along with Leonetti and Scarfo, of murdering a cement contractor named Vincent Falcone. Upon learning of the murder charges against Lawrence Merlino, Feriozzi stated that he was a "sick pup," and did notknow what to do or what he had gotten himself into (2T 95,16-20; 96). Merlino, Scarfo and Leonetti were later acquitted of the charge and Nat Nat subsequently performed more work for Feriozzi. In 1986, when Joseph Merlino asked if he could take over the C.J.S. job at the Resorts parking garage, Feriozzi asked him if Lawrence Merlino was his father. Ferriozzi testified that he felt concerned that Lawrence Merlino might become involved (2T 117, 124-25). Feriozzi also expressed to Joseph Merlino his desire that he not have anything to do with Nat Nat, but later became confident that Joseph was working on his own. Feriozzi denies having been contacted by Lawrence Merlino, or anyone else other than Joseph Merlino, concerning Bayshore's request for work. Rocco Bunodono's presence as foreman also gave confidence to Feriozzi, because of Bunodono's reputation as an effective foreman who knew how to get a job done (2T 98,11-25). After agreeing to work as foreman on the Feriozzi job, Bunodono also assisted Joseph Merlino by completing an application for a construction contractor's license on September 11, 1986, and listing himself as the company's superintendent. Joseph Merlino had previously applied but had been rejected because of his age and relative inexperience. Joseph Merlino denies having asked his father for any help in obtaining work with Feriozzi at the Resorts garage job or at any other location, but acknowledges that he asked Lawrence Merlino who Feriozzi was and that he wanted to know if he was reliable with payments (P-31 at 22 to 26, 168).

Rocco Bunodono testified that his function as foreman for Bayshore is to "see that the job runs smooth" and indicates that he has known Joseph Merlino since the latter was a small child (1T 40,6-22). Bunodono has also known Lawrence Merlino for over twenty years: they grew up in the same neighborhood, and Merlino was the best man at his wedding. He claims that he saw little of Lawrence Merlino for some ten years after he left Philadelphia and before Lawrence Merlino became active in construction in Atlantic City. When they renewed their acquaintance, Bunodono worked as foreman for Nat Nat for a least six months while completing a rebar job on the Ocean Club, and thereafter worked with G & H Construction, as well as with M & M Construction, a minority contractor. Lawrence Merlino, as president of Nat Nat, visited G & H job sites on occasion to talk to his son and a nephew employed by that company. The Division offered surveillance photographs taken by lieutenant Edward Hepburn of the Atlantic City Prosecutor's Office showing Lawrence Merlino and Rocco Bunodono together at various construction sites including the Taj Mahal Casino project (P-1). Lieutenant Hepburn testified that he conducted surveillance after receiving a report that the M & M Company (allegedly a minority outfit) was actually being run by Lawrence Merlino. The photos were taken in April 1985 and show Lawrence Merlino and Rocco Bunodono on the construction site (P-1 through P-4). The photographs also show Lawrence Merlino on the steel at a hotel/casino. Lieutenant Hepburn had no knowledge as to any involvment of Joseph Merlino in his father's reputed criminal affiliations with the Scarfo crime family. Bunodono denies that Lawrence Merlino visited him at job sites, other than those involving Nat Nat. He concedes that Lawrence Merlino visited him when he was working for M&M, but states that he has never seen Lawrence Merlino on a job with Bayshore and that he has no knowledge of any contact between him and his son's company.

The Division also offered copies of a mortgage and residential loan application in connection with the purchase of the Ventnor property from which Bayshore now does business, which states that Joseph Merlino was married at the time of application in 1987. This was not the case. Joseph Merlino denies having made such a representation in connection with the mortgage application, but concedes that he signed the loan application forms containing the false statement (3T 35,1-4).

There is no dispute as to the above facts, except as indicated, and I so **FIND.**

ISSUES

The issues to be resolved are:

(1) whether the Division of Gaming Enforcement has proven by a preponderance of the believable evidence that Bayshore is associated with a career offender or a career offender cartel in such a manner as to create a reasonable belief that the association is of such a nature as to be inimical to the policy of the casino control act in the gaming operations within the meaning of N.J.S.A. 5:12-86f so as to disqualify Bayshore from holding a vendor registration or casino service industry license;

(2) whether Bayshore Rebar, Inc., has established its eligibility by clear and convincing evidence for a casino service industry license pursuant to N.J.A.C. 19:41-3.2(a)2, including the requirement that it establish its reputation of good character, honesty and integrity pursuant to N.J.A.C. 19:43-1.3(c), and that of its officers pursuant to N.J.A.C. 19:43-1.14.

DISCUSSION AND CONCLUSIONS

(1) N.J.S.A. 5:12-86f (Inimical Association)

The state of New Jersey extends strict regulation through the Casino Control Act to all persons, locations, practices and associations related to the operation of licensed casino enterprises and to all related service industries. See, N.J.S.A. 5:12-1b(6). The legislative findings underlying the Act also provide that:

> [l]egalized casino gambling in New Jersey can attain, maintain and retain integrity, public confidence and trust, and remain compatible with the general public interest only under such a system of control and regulation as insures, so far as practicable, the exclusion from participation therein of persons with known criminal records, habits or associations. . . . N.J.S.A. 5:12-1b(7).

Moreover, participation in casino operations is deemed to be a revocable privilege conditioned upon the proper and continued qualification of individual licensees or registrants. The New Jersey Legislature also declared that:

> [s]ince casino operations are especially sensitive and in need of public control and supervision, and since it is vital to the interests of the State to prevent entry, directly or indirectly, into such operations or the ancillary industries regulated by this act of persons who have pursued economic gains in an occupational manner or context which are in violation of the criminal or civil public policies of this State, the regulatory and investigatory powers and duties shall be exercised to the fullest extent consistent with the law to avoid entry of such persons into the casino operations or the ancillary industries regulated by this act . . . . N.J.S.A. 5:12-1b(9).

This paramount concern with sealing off, to the extent possible, the casino industry and the vital service industries that serve it from infiltration and domination by organized crime is effectuated by the criteria established for disqualification of applicants seeking casino licenses:

> The Commission shall deny a casino license to any applicant who is disqualified on the basis on any of the following criteria . . . .
>
> > f. The identification of the applicant or any person who is required to be qualified under this act as a condition of a casino license as a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this act and to gaming operations. For purposes of this section, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, ultilizing such methods as are deemed criminal violations of the public policy of this State. A career offender cartel shall be defined as any group of persons who operate together as career offenders; N.J.S.A. 5:12-86f [emphasis added].

The Casino Control Commission has defined the phrase "inimical to the interest of the State of New Jersey or of licensed gaming" to mean "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." N.J.A.C. 19:48-1.1.

At issue here is whether the Division has proved that Bayshore Rebar or its officers are associated with a career offender or career offender cartel in such a manner as to create 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 and thereby is disqualified. The above provision concerning inimical associations was considered by the Appellate Division of the Superior Court of New Jersey in a 1985 case where a number of members of a union in Atlantic City were found to be inimically associated with Nicodemo Scarfo, within the meaning of the act. See, In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297 (App. Div. 1985), certif. denied 102 N.J. 352 (1985), cert. denied 475 U.S. 1085 (1986). In the Local 54 case, the Appellate Division upheld the Commission's finding of disqualification under N.J.S.A. 5:12-86f, where the Division had produced evidence illustrating the association between union employees and Scarfo. That evidence consisted of:

(1) a telephone list seized from Scarfo after his arrest for the murder of Vicent Falcone which contained names and addresses of several Local 54 employees, some listed in code;

(2) a note found in Scarfo's dresser drawer on the same occasion indicating Scarfo's interests in the activities and control of Local 54;

(3) the fact that the bail for Scarfo, Leonetti and Lawrence Merlino in the Vincent Falcone murder matter was paid by union employees and their relatives;

(4) the fact that one of the unibn employees put his house up as property bail in connection with those arrests;

(5) the immunized testimony of Joseph Salerno in the trial of Scarfo, Leonetti and Lawrence Merlino for the murder of concrete contractor Vincent Falcone as to the fact that Salerno had overhead Scarfo say that he had control of unions and had obtained union positions for certain persons. Salerno's testimony did not refer to any conversations between Scarfo and union employees which specifically referred to Local 54 by name;

(6) evidence of connections between Local 54 business dealings and persons or firms tied to Scarfo (e.g., the same insurance broker and real estate agent; the hiring by Local 54 of a firm that had put up bail for Scarfo, Leonetti and Lawrence Merlino; use of the same car rental company). See, 203 N.J Super. at 310 to 316.

The Appellate Division rejected the argument that the Division had failed to prove the exertion of any actual influence over union affairs by Scarfo and found that ample circumstantial evidence of such influence had been introduced to support the conclusion that the association was inimical and thus disqualifying. 203 N.J. Super. at 321. The New Jersey Supreme Court has also affirmed that the Commission may act to prevent possible inimical influences on licensees or applicants and need not wait until such influence is exerted. See, In re Application of Boardwalk Regency, 90 N.J. 361,372 (1982). The Appellate Division also went on to reject the First Amendment freedom of association claim made by the Local 54 employees and upheld the "inimical" criterion against the charge that it was void for vagueness.

The Local 54 case did not involve family relationships between licensees and career offenders. That issue was dealt with by the Appellate Division in the racing case of Niglio v. New Jersey Racing Commission, 158 N.J. Super. 182 (App. Div. 1978). In Niglio, the Appellate Division upheld a decision by the Racing Commission suspending the racing license of a person married to another person who was disqualified from participating in racing because of criminal connections. Because of evidence submitted

of the spouse's extensive association with the person disqualified, as well as of her financial dependence, the disqualification was based on the association and financial dependence, not on the fact of marriage. 158 N.J. Super. at 186.

Another case dealing with family ties is D'Ascenso v. Division of Gaming Enforcement, 2 N.J.A.R. 92 (1980), by the Honorable Joseph Fidler, ALJ, in which he concluded that a cocktail waitress licensed by the Commission was not disqualifed under N.J.S.A. 5:12-86f by her father's status as a career offender, because she had had only infrequent and insignificant contacts with him since in her childhood. Given the nature of her cocktail waitress function at the casino, this minimal association was seen to pose no appreciable threat to the proper functioning of legalized gambling. D'Ascenso's relationship with a live-in boyfriend who was also engaged in criminal activities was found to present no bar to her licensure and in light of the fact that the boyfriend did not exercise any significant influence or control over her and, to the contrary, as it appeared that she had some beneficial and restraining effect on him, as occasionally happens in these matters. 2 N.J.A.R. at 95. There is no evidence of such a beneficial effect on Lawrence Merlino.

The Division argues in this case that it has shown an inimical association with Lawrence Merlino sufficient to disqualify Bayshore and its principals. In particular, the Division asserts that the affidavit and testimony of Thomas DelGiorno's provides direct (albeit hearsay) evidence of Merlino's intention to use Bayshore to get construction business in Atlantic City. The Division argues that DelGiorno's statements are credible, despite his background in crime, a background which rivals and probably exceeds that of Lawrence Merlino. It notes that no promises were made to DelGiorno in exchange or as a condition for this testimony.

Apart from DelGiorno's statements as to Lawrence Merlino's involvement, the Division conceded that there was "no smoking gun", to use a phrase that DAG Steven Cirillo borrowed from another context, but it argued that there is an accumulation of factors (as in the Local 54 case) adding up to an inimical association of a non-familial nature. The Division first notes that Lawrence Merlino has long been associated with the rebar field and has owned and worked with several companies, including Nat Nat and the

Floridian version of Bayshore Rebar, Inc. It notes that Lawrence Merlino's interests in the New Jersey Bayshore is a natural extension of his prior activities and argues that he has been seen on various construction sites visiting Rocco Bunodono, who is foreman and superintendent for Bayshore and who was formerly a forman with Nat Nat, as well as a personal friend of Lawrence Merlino for many years. The Division notes that Bayshore initially operated rent-free from a home located at 15 North Decatur Avenue in Margate, which home was owned by Lawrence Merlino and out of which Nat Nat also operated and continues to operate. The Division notes that the family phone and utility bill for the 15 Decatur Avenue address were occasionally paid by Lawrence Merlino. The Division also emphasizes the business dealings between Joseph Merlino and Lawrence Merlino, including the purchase of a condominium formerly owned by Nat Nat and Scarf, Inc., which purchase was partly made possible through DelGiorno's bonuses provided by Merlino and Nat Nat. The Division also notes that Bayshore, in addition to adopting the same name used by Lawrence Merlino for another company, relied on the same insurance agency, C. J. Adams, and also utilized the services of the same bookkeeper and foreman, who had previously worked for Nat Nat. The Division cites evidence that Phyllis Mistie Merlino was, on some occasions, involved in the business dealings of Nat Nat while living at the 15 North Decatur address. Also noted is the fact that Joseph Merlino's sister Kimberly runs the operations of Nat Nat during her father's incarceration. The Division argues that the relocation of the Merlino family does not negate the various connections between Bayshore and Lawrence Merlino and Nat Nat in that the inimical association between Bayshore and Lawrence Merlino has not been severed, although it may have been better hidden and disguised. Considering DelGiorno's affidavit as well as and all of the circumstantial evidence, the Division contends that it has met the standard set forth in N.J.S.A. 5:12-86f for disqualification of Bayshore.

Counsel for respondents, Francis Hartman, Esq., sees the Division's case as not only lacking a smoking gun but also consisting largely of smoke. He argues that the State has, on the most tenuous of factual allegations, sought to darkly cloud the blood relationship between Joseph Merlino and his father and imply an inimical business association between them which has no basis in fact. Counsel for respondent argues, first (and the Division does not dispute), that the State has shown no de jure relationship between Bayshore and Lawrence Merlino in that the latter holds no stock or office in and

has not received any payments from Bayshore. As to the rest of the underlying de facto aspects of the Division's evidence, respondent admits that Joseph Merlino worked briefly as a laborer for Scarf Inc., when he was 16 and argues that he had no further connection with that company. As to Joseph Merlino's latter job with Nat Nat, respondent claims that there is nothing unusual about a son working for his father and that the sins of the father should not fall upon his children. It is also not unusual, respondent argues, for a person to start a business from his or her home, as Joseph Merlino did at 15 North Decatur Avenue. Respondent notes that Lawrence Merlino did not at any time live in the home, and that the fact that he may have occasionally paid for the phone and utility bills is only incidental to the fact that his family and former spouse lived in the home and he chose to shoulder some of their financial obligations. Respondent notes that Nat Nat was not originally located at 15 North Decatur, but operated out of 28 North Georgia Avenue in Margate and was moved to the Margate address only for the convenience of Kimberly Merlino, who was one of its principal employees. As to Phyllis Mistie Merlino, respondent notes that she had only minimal involvement in the affairs of Nat Nat and does not have an amicable relationship with Lawrence Merlino. Concerning Joseph Merlino's efforts to get casino work, respondent argues that there is no evidence that Lawrence Merlino at any time did anything to get work for Bayshore. It characterizes Joseph Merlino's efforts to establish a business as the product of a young man's desire to succeed on his own and describes the opportunity to do so given by Joseph Ferriozzi as a legitimate business transaction in which Ferriozzi decided to give the young man a chance. Respondent also notes, and the Division does not dispute, that, beyond the criminal charges that are not dealt with in this decision, no criminal charges have ever been brought against Joseph Merlino. Joseph Merlino's purchase of property from Nat Nat, respondent argues, an arm's-length financial transaction which was in no way unlawful an improper, and which played no role in the operation of Bayshore's business. Respondent also raises and dismisses the possibility that Joseph Merlino was given bonuses and allowed to purchase property in order to shield money belonging to Lawrence Merlino or Nat Nat from possible forfeiture under RICO, the federal law pertaining to racketeer-influenced corrupt organizations. Counsel for respondent also deems DelGiorno's affidavit as unworthy of belief and argues that it is further weakened by DelGiorno's statements on cross-examination in the matter of United States v. Scarfo, et al.

As to DelGiorno's statements, I note that hearsay is admissable in this proceeding and may provide the residuum of proof required. See, N.J.S.A. 5:12-107a(6); State v. Merlino, infra. DelGiorno's affidavit, as clarified by his testimony, is credible. Similiar immunized testimony was found to constitute part of the inimical association in the Local 54 case discussed above. Although DelGiorno's testimony in this case was uncertain as to whether Bayshore was specifically mentioned by Lawrence Merlino, Salerno's testimony in the Local 54 case also did not contain any recollection of a specific reference to Local 54 by name. See, 203 N.J. Super. at 318.

Beyond DelGiorno's statements, there is ample evidence of association between Lawrence Merlino and Bayshore Rebar, Inc., and its officers and foreman. Bayshore was formed shortly after a company of the same name owned by Lawrence Merlino was dissolved in Florida, and this similarity of names is more symbolic than coincidental given the rest of the connections. Joseph Merlino, who was Bayshore's initial president and owner, cut his teeth in the construction business with Scarf, Inc., which has ties to Nicodemo Scarfo through its owner Phillip Leonetti, and he later worked at his father's side at Nat Nat, Inc. While it is quite common for sons and, more recently, daughters, to follow their father's footsteps into business, the connection between Nat Nat and Bayshore was, at least at the outset of Bayshore's operation, quite close. The company shared the same residential office space, the same insurance agency, the same bookkeeper, and Bayshore relied heavily on Rocco Bunodono, who had formerly worked with Nat Nat, as its foreman. The importance of Bunodono's extensive role in this matter as a connection between Lawrence Merlino and Bayshore is further emphasized by the photographic evidence of the two men together at construction sites. Bunodono was also instrumental in obtaining Bayshore's initial license from Atlantic City, as well as one of its first substantial construction jobs from Joseph Feriozzi, who testified that Bunodono's presence reassured him that the job would run smoothly. Feriozzi also testified that he had felt fear, at least for his business if not for himself, when he had earlier learned of charges lodged against Lawrence Merlino for the murder of Vincent Falcone, an Atlantic City cement contractor. While there is no evidence that Lawrence Merlino intervened to get business for Bayshore, Feriozzi was concerned with his possible involvement. Joseph Merlino denies having generally discussed Bayshore business matters with his father, but he admits that he asked him whether Feriozzi was

"a good payer." Joseph Merlino thus demonstrated that he turned to his father for advice on at least that occasion and it is not unlikely, given their prior working relationship, that he did so on other occasions. But this case does not rest on that sort of speculation. The facts show that Joseph Merlino consulted with and dealt with his father in other financial matters, such as the purchase of the Margate condominium, which was made possible by substantial bonuses given by the father to the son. Although this real estate deal was above-board and regular in all respects, it tends to establish financial dealings between Joseph Merlino and his father. The fact that Lawrence Merlino also gave his son Joseph bonuses which totaled some $50,000 also suggests that Joesph Merlino was, at least to that extent, financially dependent upon his father and Nat Nat, despite the fact that he worked for United Carpenters and G & H Construction and had started Bayshore's business operations. Was Lawrence Merlino simply trying to do right by his oldest son or were these transactions some nefarious attempt to conceal Lawrence Merlino's assets from the reach of the federal government? The proofs submitted do not supply an answer to this question but the fact of the bonuses and the real estate deal, as well as the other business connections proven, establishes an association between Joseph Merlino and his father which goes far beyond one of simple blood relation. The common business dealings of Bayshore and Nat Nat are similar to those which were found, in the case of Local 54, to constitute an inimical association.

As stated, the Division's burden in this case is to demonstrate that Bayshore, through its officers or principle employees, is associated with Lawrence Merlino, a career offender and a member of a career offender cartel, in such a manner as to create a reasonable belief that the association is of such a nature as to be inimical to the policy of the Casino Control Act and gaming operations. N.J.S.A. 5:12-86f. The respondents contend that the State has shown much association between themselves and Lawrence Merlino, but that none of it is inimical because it is based on the natural and constitutionally protected connection of family. They point to the absence of any evidence showing actual influence by Lawrence Merlino over Bayshore. Such an argument was also raised, and rejected, in the Local 54 case, where the Appellate Division found ample circumstantial evidence of Scarfo's influence over union employees. 203 N.J. Super. at 321. Even without DelGiorno's statements, there is, in this case, ample circumstantial evidence of the external influence of Lawrence Merlino on Bayshore

Rebar, Inc., and that evidence ranges from the choice of name of the company to payment of bills and rent for its initial location, to the selection of insurance companies, bookkeeper and foreman and also to advice given by Lawrence Merlino to Joseph Merlino as to the conduct of the business and as to the purchase of real estate (unrelated to the business) which was financed, in part, by very generous bonuses provided by the father to the son. Joseph Merlino is not merely Lawrence Merlino's son in the context of this case. Their relationship is far beyond that. Their business dealings have become inextricably linked with their familial connection. If Joseph Merlino were not Lawrence Merlino's son but merely a social or business associate, the evidence in this case would be sufficient to support a conclusion that the two men are associated and that this association is of such a nature that it suggests influence and control of Bayshore by a career offender and therefore is inimical. The fact that Lawrence Merlino is related to Joseph Merlino by blood and that he was once related to Phyllis Mistie by marriage should not be allowed to obscure the nature of the business association which has formed between them or to put it beyond the reach of State regulation in the highly sensitive area of casino operations. Family ties, without greater association, cannot provide a basis for disqualification under N.J.S.A. 5:12-86f, but they do not preclude a finding of disqualification if other evidence of an inimical association, beyond that of relation by blood or marriage, is proven. See, e.g., Niglio v. New Jersey Racing Commission. Such proof is present in sufficient amount in this case. This matter is also distinguishable from the case of D'Ascenso v. Div. of Gaming Enforcement because there the contacts between the licensee and her father were infrequent and insignificant and posed no appreciable threat to the proper function of legalized gambling, especially in light of the licensee's function as a cocktail waitress. Here, Joseph Merlino's contacts with his father are substantial and on going, and while they embrace the usual aspects the relationship between a father and his son, they also are characterized by extensive business associations that go beyond the family tie and pose an ~~applicable~~ APPRECIABLE threat to the operations of a casino service industry. The fact that Lawrence Merlino is now and has since July 1987 been incarcerated awaiting trial on charges of murder and racketeering does not diminish this association. It is not unknown for inmates to control enterprises far beyond the prison walls. The fact that Lawrence Merlino is in jail because he is unable to make bail also provides a most compelling incentive and motive for him to be involved in Bayshore's business affairs. As the respondent notes, there is no evidence, beyond DelGiorno's statements, that Lawrence

Merlino is directly so involved or that he has received any monies from Bayshore or from Joseph Merlino. However, such evidence is not necessary to reach a conclusion that their association is of such a nature as to create a reasonable belief that it is inimical to the policies of the Casino Control Act and gaming operations. I **CONCLUDE** the evidence submitted, including DelGiorno's statements, as to the association between Bayshore Rebar, Inc., and Lawrence Merlino is sufficient to disqualify Bayshore under N.J.S.A. 5:12-86f and that Bayshore's vendor registration issued under N.J.S.A. 5:12-104b should be revoked.

(2) Casino Service Industry Application

The remaining issue is whether Bayshore Rebar, Inc., and its officers have proven their eligibility to be licensed as a casino service industry pursuant to N.J.S.A. 5:12-92c under N.J.A.C. 19:43-1.3 and 1.14. The Casino Control Act provides for licensing and registration of casino service industries, including construction companies contracting with casino applicants or licensees:

> [a] ll casino service industries not included in subsection a. of this section [those providing goods or services directly relating to casino or gaming activity] shall be licensed in accordance with rules of the commission prior to commencement or continuation of any business with a casino applicant or licensee or its employees or agents. Such casino service industries, whether or not directly related to gaming operations, shall include suppliers of alcoholic beverages, food and nonalcoholic beverages; garbage handlers; vending machine providers; linen suppliers; maintenance companies; shopkeepers located within the approved hotels; limousine services and construction companies contracting with casino applicants or licensees or their employees or agents. . . . d. Licensure pursuant to subsection c. of this section of any casino service industry may be denied to any applicant disqualified in accordance with the criteria contained in section 86 of this act (emphasis added). [N.J.S.A. 5:12-92c,d]

Those grounds of disqualification include those of inimical association under N.J.S.A. 5:12-86f, as discussed and concluded above. The regulations promulgated by the Casino Control Commission provide, with respect to issuance of casino service industry licenses, that:

> [n]o casino service industry license shall issue unless the individual qualification of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and of the regulations of the Commission. . . [i]n the case of casino service industry licenses issued in accordance with section 92c and d of the Act each such applicant in accordance with the standards of section 92d and 86 and the Act. [N.J.A.C. 19:41-3.2]

The casino control regulations further provide, as to standards for qualification for a casino service industry license, that:

> The general rules relating to casino service industry standards for qualification are set forth in N.J.A.C. 19:41-3.2 et seq. . . (c) 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 reputation for good character, honesty and integrity. . . [N.J.A.C. 19:43-1.3(a) and (c)] (emphasis added)

As to disqualification, the regulations state that:

> A casino service industry license may be denied to any applicant who has failed to prove by clear and convincing evidence that he or any of the persons required to be qualified, are in fact qualified in accordance with the act and with the provisions of these rules and regulations, or who has violated any of the provisions of the Casino Control Act or these rules and regulations, or who has violated any of the provisions of the Casino Control Act or these rules and regulations, or who disqualified under of the criteria set forth in section 86 of the Casino Control Act. [N.J.A.C. 19:43-1.5] (emphasis added)

With respect to persons who need to be qualified before a casino service industry license can be issued, the Commission has provided that, as to Casino Service Industry Licenses issued in accordance with Section 92c and d of the Act of the following persons must be qualified:

(i.) The enterprise;

(iii.) Each owner of the enterprise who directly or indirectly holds any beneficial interest or ownership in excess of five percent of the enterprise;

(v.) Each director of the enterprise except that a director who, in the opinion of the Commission, is not significantly involved in or connected with the management or ownership of the enterprise shall not be required to qualify;

(vi.) Each officer of the enterprise significantly involved in the conduct of business and each officer who the Commission may consider appropriate for qualification in order to insure the good character, honesty and integrity of the enterprise;

(viii.) The management employee supervising the regional or local office which employs the sales representative soliciting business or dealing directly with a casino licensee;

(ix.) Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees;

(x.) Any other person whom the chairman may consider appropriate for approval or qualification. [N.J.A.C. 19:43-1.14(a)2]

As discussed above, Joseph Merlino is currently vice-president and treasurer, as well as 25-percent owner of Bayshore Rebar, Inc. His mother, Phyllis Mistie, is the president and secretary of the company and also 75-percent owner. Rocco Bunodono functions as the Superintendent and foreman for Bayshore on various construction jobs. An application for licensure as an Casino Service Industry pursuant to N.J.S.A. 5:12-92c, was filed by Bayshore Rebar, Inc., on July 29, 1988.

The Division objected to that application on August 10, 1988, maintaining that Bayshore cannot demonstrate, by the requisite clear and convincing evidence, the good character, honesty and integrity necessary for licensure. The Division also argued that Bayshore was disqualified for licensure as a casino service industry because of its association with Lawrence Merlino and due to the indictment of the applicant's principal, Joseph N. Merlino. In addition, the Division asserts disqualification on the basis N.J.S.A.

5:12-86b because of alleged misrepresentations made by Joseph N. Merlino and Phyllis Mistie at the hearing in this matter. No particular misrepresentations are cited by the Division, which nonetheless argues that the testimony of the two was "less than truthful concerning several issues of fact" (Division's objection of August 10, 1988, at 3).

As to this last claim of misrepresentation, I **CONCLUDE** that the Division has failed to show that Joseph N. Merlino and Phyllis Mistie supplied any information which was untrue or misleading as to any material fact pertaining to their qualifications. The Division's case, beyond the statements of Thomas DelGiorno, was largely circumstantial, and the respondent did not deny the allegations of the complaint. This case turns on the interpretation to be given to those admitted facts. The Division perceives, and I conclude that it has proven, an inimical association where the respondents see only family connections. The Division has not shown, however, that the respondent supplied untrue or misleading information as to any material facts and I **CONLCUDE**, on that basis, that Bayshore is not disqualified from receiving a casino service industry license under N.J.S.A. 5:12-86b.

The Division also cites the criminal indictment pending against Joseph N. Merlino as an additional basis for disqualification, under N.J.S.A. 5:12-86c and d.. Because the matter of this pending indictment as set forth in the amended complaint was severed in order to expedite resolution of the original complaint, as well as the casino service industry license application matter, it is not appropriate at this time to consider the indictment pending its resolution and I so **CONCLUDE.**

The Division also asserts Bayshore's inimical association under N.J.S.A. 5:12-86f as precluding the issuance of a casino service industry license in this instance under N.J.A.C. 19:41-3.2(a)2. The Casino Control Act provides that licensure for a casino service industry may be denied when the applicant is disqualified under section 86, including 86f. See, N.J.S.A. 5:12-92d. The rule requiring that an applicant also establish its reputation for good character, honesty and integrity by clear and convincing evidence is in addition to the basic requirement that the applicant not be disqualified under N.J.S.A. 5:12-86. See, N.J.A.C. 19:43-1.3(a),(c). The Commission has discretion to deny a casino service industry license application if it concludes that the nature of the

disqualification is such as to render issuance of the license contrary to the policy of the Act and to gaming operations. In this instance, the evidence supports the conclusion that Bayshore is disqualified by virtue of its inimical association with Lawrence Merlino, a career offender and a member of a career offender cartel. On the basis of this disqualification alone, and without reaching the issue of the reputation of Bayshore and its officers for good character, honesty and integrity, I **CONCLUDE** that the Bayshore Rebar, Inc., application of for a casino service industry license should be denied by the Commission.

DISPOSITION

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that respondent Bayshore Rebar, Inc., is ajudged to be disqualified pursuant to N.J.S.A. 5:12-86f and that its vendor registration, issued pursuant to N.J.S.A. 5:12-104b, be revoked. It is further **ORDERED** that the application of respondent Bayshore Rebar, Inc., for casino service industry license pursuant to N.J.S.A. 5:12-92c and d is denied on the grounds of disqualification under N.J.S.A. 5:12-86f. It is further **ORDERED** that all casino licensee are prohibited from transacting any business — present or future, direct or indirect — with Bayshore Rebar, Inc.

This recommended decision may be adopted, 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.

Dec. 20, 1988
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

12-21-88
DATE

Marianne Farmer
DIVISION OF MOTOR VEHICLES

Mailed To Parties:

DEC 23 1988
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

ct

WITNESSES

FOR THE PETITIONER:

Lieutenant Edward Hepburn, Atlantic City Police
Rocco Bunodono
Phyllis Mistie Merlino
Deborah Wehrhan
Joseph P. Feriozzi
Joseph N. Merlino

EXHIBITS

FOR THE PETITIONER:

P-1 Photograph taken by Lieutenant Hepburn on or about April 22, 1985 of Lawrence Merlino and Rocco Bunodono at an Atlantic City construction site

P-2 Photograph taken by Lieutenant Hepburn on or about April 22, 1985 of Lawrence Merlino and Rocco Bunodono at an Atlantic City construction site

P-3 Photograph taken by Lieutenant Hepburn on or about April 22, 1985 of Lawrence Merlino and Rocco Bunodono at an Atlantic City construction site

P-4 Photograph taken of Lawrence Merlino at an Atlantic City construction site on or about April 22, 1985

P-5 Photograph taken of Lawrence Merlino at an Atlantic City construction site on or about April 22, 1985

P-6 Photograph taken by Lieutenant Hepburn of Lawrence Merlino on the steel structure of construction at Resorts

P-7 Photograph taken by Lieutenant Hepburn of Lawrence Merlino on an Atlantic City construction site on April 22, 1985

P-9 Photograph taken by Lieutenant Hepburn of a motor vehicle registered to Lawrence Merlino parked at an Atlantic City construction site on or about April 22, 1985

P-10 Application submitted to the Board of Examiners for Construction Contractor License filled out by Rocco Bunodono

P-11 Account input record of the First Fidelity Bank

P-12 Memo from Bayshore Rebar of September 15, 1986, to Continental Insurance

P-12a Memo from Bayshore Rebar, dated September 15, 1986, to Continental Insurance Company

P-13 Memo of September 15, 1986, from Nat Nat, Inc., to North River Insurance Company

P-13a Original copy of a memo of September 15, 1986, from Nat Nat, Inc., to North River Insurance Company

P-14 State Grand Jury Indictment No. SGJ174-86-1(1)

P-15 1980 report of the Pennsylvania Crime Commission

P-16 1983 report of the Pennsylvania Crime Commission

P-17 1984 report of the Pennsylvania Crime Commission

P-18 Testimony before the United States Senate as to organized crime in America by Lieutenant Justin Dintino

P-19 Decision of the Casino Control Commission on Dkt. Nos. 82-EL-19 and 20

P-20 Final Order of the Casino Control Commission in OAL DKTS. CCC 1807-83 and CCC 1809-83 excluding Lawrence Merlino and Philip Leonetti from being present in licensed casino establishments

P-21 1985 report of the Pennsylvania Crime Commission

P-22 Indictment No. 142-85-5(1)

P-23 For identification only

P-24 Docket sheets in the Matter of the State of New Jersey v. Lawrence Merlino, SGJ 142-85-5(1)

P-25 Application for designation of an insurance company submitted by Nat Nat, Inc., in September 1986

P-26 Phone message left for Deborah Wehrhan concerning a call from Nat Nat

P-27 Note from Phyllis Mistie Merlino, dated September 15, 1986

P-28 Phone message with intent to cancel insurance for Nat Nat

P-29 Certificate of incorporation of Bayshore Rebar, dated December 13, 1985

P-30 Letter from Assistant Manager, First Jersey Bank, to whom it may concern, dated January 29, 1986

P-31 Transcript of sworn interview of Joseph Merlino

P-32 Documents of incorporation and dissolution in the state of Florida on behalf of Bayshore Rebar, Inc.

P-33 Settlement statement in connection with the sale of property at the Margate Towers

P-34 Mortgage between Scarf, Inc., and the Margate Towers Apartments

P-35 Deed between Scarf, Inc., and Nat Nat, Inc., and the application filed by Joseph Merlino.

P36 Loan application of Joseph N. Merlino

P-37 Tax returns for Joseph N. Merlino for 1985

P-38 Tax returns for Joseph N. Merlino for 1986

P-39 Request for verification of employment by AmeriFederal Savings Bank

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FOR THE RESPONDENT:

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R-2 Affidavit of Lawrence Merlino
R-3 Testimony by Thomas Del Giorno In the Matter of United States v. Scarfo, et al.

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-256 and 89-CSI-1

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	
BAYSHORE, REBAR, INC. AND JOSEPH N. MERLINO	:	DECISION
Respondents,	:	
AND	:	
APPLICATION OF BAYSHORE REBAR, INC. FOR A CASINO SERVICE INDUSTRY LICENSE.	:	

Francis J. Hartman, Esq., Charles H. Nugent, Jr., Esq., and Stephen W. Kirsch, Esq., appeared on behalf of Bayshore Rebar, Inc.

Julia L. McClure, Deputy Attorney General, appeared on behalf of the Division of Gaming Enforcement

INTRODUCTION

This matter arises out of a complaint filed by the Division of Gaming Enforcement (Division) which essentially sought the termination of business between casino licensees and Bayshore Rebar, Inc. (Bayshore) pursuant to section 104(b) of the Casino Control Act (Act), N.J.S.A. 5:12-1 et

seq.[1] Subsequent to the filing of the complaint Bayshore was required to and did apply for a casino service industry license pursuant to section 92 of the Act. By order dated April 10, 1989, this application was denied and the relief sought by the Division was granted by the New Jersey Casino Control Commission (Commission) essentially for the reasons stated in the initial decision which had been filed in this case by the Office of Administrative Law (OAL). Bayshore filed an appeal to the New Jersey Superior Court, Appellate Division and the Commission issues this opinion pursuant to R. 2:5-1(b).

PROCEDURAL HISTORY

Bayshore reinforces concrete on construction projects. It had been engaged in business as a subcontractor on several construction sites of casino licensees or applicants for casino licenses. Pursuant to N.J.S.A. 5:12-104(b), the agreements between Bayshore and casino licensees and applicants are subject to review and approval by the Commission.[2]

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1. Various provisions of the Act may be cited by section number only, omitting the prefix, "N.J.S.A. 5:12-."

2. At the time this matter was initiated section 104(b) did not include reference to applicants for casino licenses. However, the Act was amended in January 1988 (Footnote Continued)

On January 6, 1987, the Division filed with the Commission a complaint for revocation and an application for a temporary prohibitory order against Bayshore. The Division sought to prohibit any further business, direct or indirect, between Bayshore and casinos based upon the allegation that the company and its principal qualifier, Joseph N. Merlino, were associated with a member of organized crime in such a manner as to render it disqualified pursuant to N.J.S.A. 5:12-86(f). The organized crime figure identified in the complaint is Lawrence "Yogi" Merlino, the father of Joseph N. Merlino.

We denied the Division's request for a temporary prohibitory order at our public meeting of February 25, 1987. On March 3, 1987, Bayshore filed an answer to the complaint and the matter was thereafter transmitted to the OAL for a plenary hearing.

On May 6, 1987, the Division filed an amendment to the complaint alleging that Joseph N. Merlino and Bayshore were disqualified pursuant to N.J.S.A. 5:12-86(c)(1) and (g) based on a three-count indictment filed against Joseph N. Merlino on March 20, 1987, for possession of a deadly weapon

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(Footnote Continued)
to so provide. L. 1987, c. 355, §8, eff. January 4, 1988.

for unlawful purposes contrary to N.J.S.A. 2C:39-4; aggravated assault contrary to N.J.S.A. 2C:12-1(b)(1); and aggravated assault with a deadly weapon contrary to N.J.S.A. 2C:12-1(b)(2). To expedite a hearing and resolution of the association allegation, and with the concurrence of the parties, the Administrative Law Judge (ALJ) in his prehearing order dated November 18, 1987, deferred a hearing on the allegations of the indictment pending resolution of the criminal proceedings against Joseph N. Merlino pursuant to section 86(d). Hearings on the association allegation were held on March 14, 29 and 31, 1988. The record was closed on April 17, 1988. On June 16, 1988, the Division filed a motion to reopen the record to admit additional evidence, specifially the affidavit of Thomas A. DelGiorno, an admitted member of the Scarfo organized crime family.

On June 24, 1988, the Division filed a second application for a temporary prohibitory order with the Commission. We denied this application at our public meeting of July 13, 1988, noting in part that the ALJ's decision on the associational question appeared to be imminent.

On July 22, 1988, the ALJ granted the Division's motion to reopen the record and both parties were permitted to supplement the record.

In the interim, by letter dated May 18, 1988, Bayshore was advised that, due to the regular and continuing nature of its business with casino licensees and applicants, it was required to file an application for licensure as a casino service industry pursuant to N.J.S.A. 5:12-92 and N.J.A.C. 19:43-1.2. Bayshore filed its application on July 26, 1988. By letter-report dated August 10, 1988, the Division objected to Bayshore's licensure on the grounds stated in its complaint, as amended, and on the further grounds that Joseph N. Merlino and Phyllis Mistie Merlino, Bayshore's qualifiers, misrepresented material facts at the OAL hearing and that Bayshore lacked the good character, honesty and integrity required by N.J.A.C. 19:43-1.3.

On August 18, 1988, the application matter was consolidated with the pending complaint matter in the OAL. The record was kept open until November 21, 1988, to permit the parties an opportunity to introduce additional evidence.

On December 21, 1988, the ALJ recommended that Bayshore's application be denied for the reasons stated in an initial decision, a copy of which is appended hereto as A-1 through A-40 and incorporated herein as if set forth in

full.[3] Essentially, the ALJ's recommendation was predicated upon his finding that Bayshore and its principal, Joseph N. Merlino, had an association with Lawrence Merlino, a career criminal offender and a member of a career criminal cartel, which rendered Bayshore's licensure inimical to the Casino Control Act pursuant to N.J.S.A. 5:12-86(f) and thus disqualified it for licensure as a casino service industry. The ALJ further concluded that the Division failed to prove its allegations that Joseph N. or Phyllis Mistie Merlino had made any material misrepresentations. The judge also noted that the criminal indictments filed against Joseph N. Merlino were still pending at the time of the filing of the initial decision and were not considered in his decision. The ALJ made no determination on the issue of whether Bayshore carried its burden proving its good character, honesty and integrity.

On January 9, 1989, Bayshore filed exceptions to the initial decision. On January 17, 1989, the Division filed a reply.

After consideration of the entire record in this matter, we determined at our public meeting of April 5,

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3. By letter dated January 6, 1989, the ALJ filed a correction to page thirty of the initial decision, a copy of which is appended hereto as A-41.

1989, to adopt the initial decision, subject to a modification to find that, in addition to Bayshore, Joseph N. Merlino and Phyllis Mistie Merlino were also disqualified by reason of section 86(f). Prior to announcing our decision we were informed by the parties that Joseph N. Merlino had been found guilty of all three counts of the indictment. Counsel for Bayshore iterated Bayshore's right to have a hearing relating to this aspect of the case. Transcript of Commission public meeting April 5, 1989, at 100-7 to 100-12.

The decision to deny the application was memorialized by order dated April 10, 1988. Consistent with our determination, the order further required the termination of all contracts between Bayshore and casino licensees and their agents within fifteen days.

On April 24, 1989, Bayshore filed with the Commission a motion for stay pending appeal of our order of April 10, 1989. At our public meeting of April 26, 1989, we denied Bayshore's motion.

DISQUALIFICATION PURSUANT TO N.J.S.A. 5:12-86(f)

The ALJ concluded that Bayshore is disqualified pursuant to N.J.S.A. 5:12-86(f), by reason of the association between it and its principal, Joseph N. Merlino, with Lawrence Merlino. Bayshore conceded that Lawrence Merlino was a career offender and member of a career offender cartel, the Act's euphemism for organized crime

figures. This Commission had already determined as much by including the elder Merlino on the Exclusion List, pursuant to N.J.S.A. 5:12-71, in 1985.[4] Having reviewed the record in detail we accept the ALJ's recommendation to deny Bayshore's application and grant the relief sought in the Division's complaint.

The Commission has been charged by the Legislature with protecting 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). To this end the Legislature enacted "a comprehensive statutory scheme that authorizes casino gambling and establishes a rigorous system of regulation for the entire casino industry." Brown v. Hotel and Restaurant Employees and Bartenders International Union Local 54, 468 U.S. 498, 104 S. Ct. 3179, 3182, 82 L. Ed. 2d 373 (1984). Keeping the casino industry free from infiltration by or even the influence of organized crime is the primary mission of the agencies created by the Act. Ibid.

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4. See State v. Lawrence Merlino and Philip Leonetti, 8 N.J.A.R. 126 (1985), aff'd. 216 N.J. Super. 579 (App. Div. 1987), aff'd. o.b. 109 N.J. 134 (1988).

N.J.S.A. 5:12-92(d) provides that a casino service industry may be "disqualified in accordance with the criteria contained in section 86" of the Act. The Division alleged that Bayshore should be disqualified pursuant to section 86(f) of the Act. That section provides in part that any person[5] who is required to be qualified under the Act shall be disqualified if such person is determined to be "... an associate of a career offender or a career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this Act and to gaming operations." As this language has been interpreted and applied, the association is inimical if it presents the danger of influence or control over casino-related business by an organized crime figure. See In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), cert. den. 475 U.S. 1085, 106 S. Ct. 1467 (1986). We need not wait, however, until this potential control manifests itself in criminal behavior by the associate. Ibid. In accordance with these guiding

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5. N.J.S.A. 5:12-37 defines "person" as:

(Footnote Continued)

principles, we must analyze the nature and quality of the association between Bayshore and Lawrence Merlino to determine if it creates an appreciable risk that Lawrence Merlino might exercise some degree of influence over Bayshore.

The ALJ reviewed the voluminous record in this matter and found that the contacts between Lawrence Merlino and Joseph N. Merlino, Bayshore's principal, "are substantial and on going [sic], and while they embrace the usual aspects [of] the relationship between a father and his son, they also are characterized by extensive business associations that go beyond the family tie and pose an appreciable threat to the operations of a casino service industry." A-30 and A-41.

Based on our own close scrutiny of the record, we agree with the ALJ. The Division's proofs established by a fair preponderance of the credible evidence that the nature and quality of the association is such that Lawrence Merlino could, indeed, exercise control or influence over Bayshore. Although the evidence here of a tainted association is largely circumstantial, it is not for that reason alone

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(Footnote Continued)
Any corporation, association, operation, firm, partnership, trust or other form of business association, as well as a natural person.

deficient. The Local 54 decision, which also involved an 86(f) disqualifying association, was grounded in "a record replete with circumstantial evidence." Local 54, 203 N.J. Super. at 321. There, too, no proof of actual misconduct by union officials at Scarfo's behest was shown, though there was evidence of Scarfo's interest in union affairs. Nevertheless, the court upheld the Commission's determination that the potential for untoward influence by the Scarfo crime family was disqualifying.

In response to the Division's proofs, Bayshore suggests that each of the indicia of the purportedly inimical association can be explained, most as the natural elements of a father-son relationship. The applicant's contention essentially is that it has no relationship with Lawrence Merlino; the only relationship is between Lawrence the father and Joseph the son and the son ought not be disqualified simply because of who and what the father is.

We can agree only to a point. The disqualification of the father does not alone disqualify the son. The old English notion of "corruption of the blood" has never been part of American Jurisprudence and certainly section 86(f) does not provide reason to incorporate it into casino law. But just as the father-son relationship cannot be used as a sword to disqualify, neither can it be used as a shield from regulatory scrutiny.

In Niglio v. New Jersey Racing Commission, 158 N.J. Super. 182 (App. Div. 1978), the Appellate Division recognized the public interest in the strict regulation of legalized gambling and upheld the Racing Commission's decision to disqualify the wife of an individual convicted of certain criminal offenses from racing a horse that she owned. The court held:

> The undesirability of an association between those previously convicted of a crime or those in affinity with such a person and the sensitive "business of racing and the legalized gambling attendant thereupon," is too apparent to justify extended discussion. Certainly an appropriately strong state interest is involved and there is a rational basis for the classification imposed. [Id. at 188, (quoting Jersey Downs, Inc. v. Division of New Jersey Racing Commission, 102 N.J. Super. 451, 457 (App. Div. 1968)].

The Niglio decision was predicated, not so much on the familial relationship per se, but rather on the wife's financial dependence on her disqualified spouse. In the instant case, the operative question is whether the evidence cited by the ALJ is sufficient to raise reasonable concern that Lawrence could influence the activities of Bayshore. We believe that it most certainly is, as a recapitulation of the pertinent evidence will demonstrate.

Bayshore was incorporated in New Jersey on December 13, 1985, only one month after the dissolution of a Florida

corporation of the same name owned by Lawrence Merlino. Joseph N. Merlino's employment with Lawrence's Merlino's company, Nat Nat, ended some undisclosed date prior to December 1985, yet Joseph received a $15,000 "bonus" check from his father on or about March 10, 1986. At around the same time, Joseph bought from Lawrence the condominium that Lawrence had previously acquired from Scarf, Inc.[6] Phyllis Mistie Merlino, Bayshore's President, is listed on insurance records for Nat Nat as late as January 16, 1987. Nat Nat and Bayshore operated from the same premises, the home of Phyllis and her children which is owned by Phyllis's ex-husband, Lawrence, as recently as eight months prior to the OAL hearings conducted in March 1988. Bayshore paid no rent during this period and on occasion had its phone bill paid by Lawrence. It used the same bookkeeper and insurance agent as Nat Nat. As of the date of the OAL hearings, Bayshore had employed as its foreman, Rocco Bunodono, the former foreman for Lawrence at Nat Nat.

We cannot dismiss these factors as being "innocuous" as the applicant suggests. The indicia of a significant, non-familial, association between Lawrence Merlino and

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6. The background of Scarf, Inc., is discussed in State v. Lawrence Merlino and Philip Leonetti, supra, 8 N.J.A.R. at 152-153.

Bayshore are too recent, numerous and substantial to permit Bayshore's participation in the casino industry under the strict standards that we are obliged to uphold. The risk of infiltration by organized crime is too great, too palpable, to warrant any decision other than denial of licensure in this instance.

Our concerns are in no way alleviated by Bayshore's contention that, because Lawrence Merlino has recently been sentenced to prison for life, he is in no position to influence Bayshore. The influence of the Scarfo crime family in the Atlantic City area is well-documented. We do not share the same confidence that Lawrence Merlino either directly or indirectly could not influence the operations of Bayshore even while he resides within prison walls. Moreover, this record is inadequate for us to reach a firm conclusion as to the finality of Lawrence Merlino's conviction and sentence.

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

As an additional basis for disqualification, the Division, in its letter-report objecting to Bayshore's licensure as a casino service industry, alleged that Phyllis Mistie Merlino and Joseph N. Merlino each misrepresented material facts at the OAL hearing in an attempt to cover-up any relationship between Bayshore and Nat Nat contrary to section 86(b) of the Act. The ALJ concluded that the

Division failed to prove its case concerning these allegations. We agree. Because the Division failed to make any specific allegations of such conduct or offer any proof in this regard, we do not see any need for extended discussion on this issue.

DISQUALIFICATION PURSUANT TO N.J.S.A. 5:12-86(c)(1)

In its amended complaint and letter-report, the Division alleged that Joseph N. Merlino had engaged in criminal conduct which was the basis of a three count criminal indictment filed against him and disqualifying to Bayshore pursuant to section 86(c)(1) of the Act. To expedite a hearing on the other issues involved in this matter, the ALJ accepted a stipulation by the parties to sever the issue of the indictment and defer consideration of the indictment pending its resolution. The ALJ properly did not consider the indictment in his initial decision.

We were advised by the parties at our public meeting of April 5, 1989, that Joseph N. Merlino has been found guilty on each count of the indictment. We do not consider this aspect of the case in this decision. Upon sentencing, because the criminal conduct by Mr. Merlino will have been resolved, there will no longer be any basis for continued deferral under the Casino Control Act. N.J.S.A. 5:12-86(d). Thereupon, the matter should proceed to a hearing in the Office of Administrative Law to assess whether Bayshore and

Joseph N. Merlino are also disqualified pursuant to N.J.S.A. 5:12-86(c)(1).

GOOD CHARACTER HONESTY INTEGRITY PURSUANT TO N.J.A.C. 19:43-1.3(c)

The ALJ also did not reach a decision with respect to whether Bayshore established the good character, honesty and integrity required by N.J.A.C. 19:43-1.3(c). The criminal allegations against Joseph N. Merlino, concerning disqualification pursuant to section 86(c)(1) of the Act, are equally relevant to a consideration of Bayshore's good character, honesty and integrity. Therefore it is appropriate for the good character issue to proceed to a hearing and be tried along with the issue of disqualification pursuant to section 86(c)(1).

CONCLUSION

The possibility of infiltration into the casino industry by the likes of Nicodemo Scarfo and his associates is the raison d'etre for strict State regulation. The Division's proofs established by a fair preponderance of the evidence an association between the applicant and a notorious organized crime figure well beyond the mere familial. We are satisfied that this association, manifesting itself in the structure and operation of a business engaged in casino hotel construction, is the type envisioned by section 86(f) of the Act, i.e., one which we

reasonably believe to present a threat to the integrity of the gaming industry. Accordingly, we adopt the ALJ's conclusion that Bayshore is disqualified pursuant to section 86(f) and his recommendation that Bayshore's application for a casino service industry license be denied. This disqualification runs to Bayshore's qualifiers as well. Accordingly we modify the initial decision to conclude that Joseph N. Merlino and Phyllis Mistie Merlino are also disqualified pursuant to section 86(f).

Walter N. Read, Chair

Valerie H. Armstrong, Vice Chair

W. David Waters

E. Kenneth Burdge

Frank J. Dodd

Dated: May 10, 1989

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-424
OAL DOCKET NO. CCC 6493-88
ORDER NO. 89-48-11

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

Complainant,

v.

ORDER

BOARDWALK REGENCY CORP.,
d/b/a CAESAR'S ATLANTIC CITY,
NICHOLAS NIGLIO AND RACHEL BOGATIN

Respondents.

A hearing having been held before the Office of Administrative Law; and two initial decisions having been filed by the administrative law judge (ALJ) with the Casino Control Commission; and exceptions and replies to exceptions having been filed by the parties to both initial decisions; and the Commission having considered the entire record of these proceedings at its public meetings of August 16 and November 1, 1989; and for the reasons stated on the record of the Commission's public meeting of December 6, 1989,

IT IS on this 4th day of January 1990, ORDERED:

1. The ALJ's conclusion that N.J.S.A. 5:12-134 and N.J.A.C. 19:53-1.5(a) require casino licensees to treat their employees equally and fairly is adopted. However, the ALJ's conclusion that these provisions of Casino Control Act and Commission regulations do not apply to individual casino employees is rejected and this issue is remanded to the OAL for further proceedings. Because the ALJ formed an assessment of the credibility of respondents Niglio and Bogatin, it is requested that the

hearing on remand be conducted by an ALJ other than the one who heard this matter initially;

2. The ALJ's conclusion that N.J.A.C. 19:45-1.12(a) regulates the conduct of both casino licensees and individual casino employees is adopted;

3. The ALJ's recommendation to dismiss Count III is adopted subject to the following modification: The Commission did not intend to incorporate all applicable federal, state, and local laws into the standard anti-preemption language of Boardwalk Regency Corporation's (BRC) Certificate of Operation, thereby investing itself with jurisdiction to enforce any and all legal obligations related to the operation and maintenance of a casino hotel. Therefore, the dismissal of Count III is based upon a failure to state a cause of action;

4. The ALJ's conclusion that respondent BRC violated N.J.S.A. 5:12-134 and N.J.A.C. 19:53-1.5(a) by intentionally discriminating against three of its employees on May 13, 1988, is adopted. However, based upon the uncontradicted evidence in the record, the initial decision is modified to find BRC liable for a similar discriminatory reassignment of two of its employees on May 7, 1989;

5. The ALJ's recommendation that BRC be required to pay a civil penalty of $15,600 as a sanction for these five violations is rejected. BRC's violations are extremely serious both because of the inherently abhorent nature of race and sex-based discrimination and because of BRC's prior regulatory violations which, like those involved herein, are marked by a marked by a willingness to cater to preferred patrons with little or no regard to the regulatory process. Among

the prior regulatory violations are State v. Boardwalk Regency Corp., 11 N.J.A.R. 29 (1983), State v. Boardwalk Regency Corp., et al., Docket No. 84-246 (Commission decision October 28, 1985), and State v. Boardwalk Regency Corp., Docket Nos. 87-290 and 88-147 (Consolidated) -- all of which Commission officially notices pursuant to N.J.S.A. 5:12-107(b). In addition, the Commission believes that the corrective action taken by BRC was inadequate. Upon consideration of the factors of N.J.S.A. 5:12-130, a penalty of $250,000 is hereby imposed. Furthermore, BRC is hereby required to develop a training course for all of its employees, the focus of which shall be compliance with the Act and regulations with particular emphasis on appropriate methods for dealing with high roller patrons; and

6. The ALJ's finding that the Division failed to prove by a preponderance of the credible evidence that BRC and Bogatin instructed a pit boss not to supervise Robert Libutti's play on May 13, 1988, is adopted and Count II is therefore dismissed.

IT IS FURTHER ORDERED that the foregoing civil penalty be 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 training program referred to above be submitted to the Commission for approval within six months of the date of this order.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

PARTIAL INITIAL DECISION
AND ORDERS CONCERNING
DISCOVERY AND AN AMENDMENT
TO THE PREHEARING ORDER
OAL DKT. NO. CCC 6493-88
AGENCY DKT. NO. 88-424

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
BOARDWALK REGENCY CORP.,
d/b/a CAESAR'S ATLANTIC CITY,
NICHOLAS NIGLIO AND
RACHEL BOGATIN,
Respondents.

Timothy Ficchi, Deputy Attorney General and **Fredric E. Gushin**, Assistant Director for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Gregory Parlimen, Esq., for respondent Boardwalk Regency Corp. (Pitney, Hardin, Kip & Szuch, attorneys)
Lloyd D. Levenson, Esq., for respondent Niglio (Cooper, Perskie, April, Niedelman, Wagenheim & Levenson, attorneys)
Jack Gorny, Esq., for respondent Bogatin (Horn, Kaplan, Goldberg, Gorny and Daniels, attorneys)

Partial Record Closed: May 16, 1989 Decided: May 24, 1989

BEFORE **EDGAR R. HOLMES**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on June 26, 1988, alleging in the first count that Boardwalk Regency Corp. (BRC), Nicholas Niglio (Niglio) and Rachel Bogatin (Bogatin) violated N.J.S.A. 5:12-134(b) and N.J.A.C. 19:53-1.5(a), by failing to afford an equal opportunity to certain BRC employees because of their race, color and sex. The Division alleged in the second count that respondents BRC and Bogatin violated N.J.A.C. 19:45-1.12(a)(6) and BRC's internal supervision controls by directing a pit boss not to "watch" the conduct of the craps game at table #8 on May 13, 1988. In the third and final count, the Division alleges that respondent BRC violated N.J.S.A. 5:12-96(a), and its Certificate of Operation, by failing to adhere to the certificate and by failing to operate the casino in accordance with Title VII of the Civil Rights Act of 1964 and New Jersey's Law Against Discrimination N.J.S.A. 10:5-1 et seq. (NJLAD).

The respondents answered the complaint and requested a hearing pursuant to N.J.S.A. 5:12-107. The matter was transmitted to the Office of Administrative Law (OAL) on September 1, 1988, to be heard 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 May 16, 1989, the respondents moved for Summary Judgment.

FACTS DEEMED TRUE FOR PURPOSE OF MOTION

A casino patron requested that he and his party be served at the gaming tables by white male casino employees only and that supervisors not "watch" his party's play at the craps table. This request was honored. It was effectuated by Niglio and Bogatin, key employees of BRC, who transferred black and female casino employees to another area of the casino and replaced them with white males. In addition, Bogatin ordered the pit boss not to watch the play.

FIRST COUNT

Niglio and Bogatin

Niglio and Bogatin contend that N.J.S.A. 5:12-134 and N.J.A.C. 19:53-1.5 (a) (the equal employment statute and regulation) are limited in their application to

licensed casinos and casino service industries and therefore so much of count one as purports to charge them should be dismissed.

The statute requires that applicants for a casino license guarantee that all contracts and subcontracts awarded in connection with construction or renovation of a proposed casino facility contain an appropriate affirmative action program consonant with N.J.S.A. 10:5-1, NJLAD. It also requires that an applicant, including a casino service industry, provide equal employment opportunities to all prospective employees in accordance with an approved affirmative action plan consonant with N.J.S.A. 10:5-1. It further requires that certain rehabilitated offenders, minorities and handicapped persons be guaranteed equal employment opportunities in accordance with N.J.S.A. 10:5-1. Finally, it provides that if the Commission violates this statute by issuing a casino license without the required filings and guaranties, the license shall be null and void.

The cited regulation, N.J.A.C. 19:53-1.5(a), spells out in great detail the guaranties to be included in affirmative action programs. Nowhere in the statute, or in the far greater detailed regulation, are individual casino employees charged with an affirmative duty. The law and regulation express the duties of casino applicants, casino licensees, casino service industry licensees, contractors and subcontractors to act according to an affirmative action plan and it also expresses the correlative duty of the Commission to require such plans during the licensing application process. Casino employees are mentioned only as a protected class. No standard of conduct is identified to which they must adhere. *In re Polk License Revocation*, 90 N.J. 550, 575 (1982).

The statute reflects the policy of the State of New Jersey towards discrimination and provides that casinos establish affirmative action programs. It does not provide that individual casino employees are responsible for anything in connection with the administration, or enforcement, of a program to provide equal employment opportunities.

This is not to say that racist or sexist acts committed by casino employees must be tolerated. Such acts raise the issue of an employee's good character, honesty and integrity. The possession of good character, honesty and integrity is required of casino employees by N.J.S.A 5:12-89b2 and 90b.

The purpose of the good character requirement is to insure that the industry employs persons who are responsive to laws and regulations, not to peer pressures or patron pressures. It is to insure that the industry employs persons who are able to discriminate between right and wrong, not white and black. And it is to insure that the industry employs persons with the courage to just say no to outrageous demands.

Boardwalk Regency Corp.

BRC contends that the first count of the complaint should be dismissed. It claims that N.J.S.A. 5:12-134 does not apply to current employees but is limited to job applicants. But the affirmative action plans required by N.J.S.A. 5:12-134 must be consonant with the NJLAD. N.J.S.A. 10:5-1 et seq.

The NJLAD requirement that employees be treated equally and fairly does not end with the initial employment process. It is a continuing obligation so that one cannot hire minorities and then segregate their drinking fountains or gaming tables.

In addition, the regulation cited in the first count, N.J.A.C. 19:53-1.5(a), for which N.J.S.A. 5:12-134 is a source, expressly requires that employees be treated during employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, liability for service in the armed forces of the United States, or handicaps.

I **CONCLUDE** therefore that the statute cited in the first count of the complaint proscribes and directs the conduct of casino licensees and other named corporate bodies connected with the casino industry. It does not proscribe or direct the conduct of persons in their individual capacity.

I **GRANT** the motions of Niglio and Bogatin and **DISMISS** count one of the complaint as it applies to them.

I **DENY** the motion of BRC to dismiss the first count of the complaint.

SECOND COUNT

Bogatin

Bogatin contends that the second count should be dismissed since N.J.A.C. 19:45-1.12(a) cannot be interpreted to apply to individual employees. She claims that the regulation merely informs casinos how to staff gaming areas. The regulation reads in pertinent part as follows:

> (a) The following personnel shall be used to operate and conduct table games in an establishment:
>
> ...
>
> 6. Pit boss shall be:
>
> i. The third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of craps games at not more than eight craps tables; and
>
> ...

While it is true that the regulation mandates staffing patterns, it also clearly puts the third level responsibility for supervising craps games upon a pit boss. Any reasonable English reader of the regulation could determine that a pit boss has supervisory responsibility over craps tables. Bogatin is charged with ordering a pit boss not to exercise that responsibility.The action complained of is readily identified in the language of the regulation.

Boardwalk Regency Corp.

BRC contends that the regulation cited in the second count is nothing more than a job description and that no penalty is provided for its violation. N.J.A.C. 19:45-1.12 (a) is more than a job description; it is a job description enacted into law. In addition, N.J.S.A. 5:12-129 authorizes the Commission to sanction conduct provided the standards of N.J.S.A. 5:12-130 are followed. Both statutes refer to violations of regulations as conduct which may be sanctioned. It is alleged in count two that a specific regulation has been violated, N.J.A.C. 19:45-1.12(a). Again, the action complained of is readily identified in the language of the regulation.

I **CONCLUDE** that N.J.A.C. 19:45-1.12(a) regulates the conduct of both casinos and individual casino employees.

I **DENY** the motion of Bogatin and BRC to dismiss Count 2 of the complaint.

THIRD COUNT

Boardwalk Regency Corp. only

BRC contends that the third count of the complaint should be dismissed. The third count alleges that BRC violated its Certificate of Operation and N.J.S.A. 5:12-96, which requires a licensed casino to have a certificate of operation. BRC's certificate of operation requires it to obey the Casino Control Act and all other applicable State, Federal and local laws. The complaint alleges that Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2,000e et seq. is an applicable law and so, it alleges, is NJLAD N.J.S.A. 10:5-1 et seq. Since, the Division alleges, BRC violated both Title VII and NJLAD, it must be in violation of the Certificate of Operation and N.J.S.A. 5:12-96.

However, the Division concedes in its brief that it is not prosecuting a claim before this tribunal under either Title VII or NJLAD. It argues that it is prosecuting BRC only under the Casino Control Act and section 134 in particular. But a violation of 134 is charged in the first count. Therefore, the third count of the complaint is surplusage.

I **CONCLUDE** that the third count of the complaint is surplusage.

I **GRANT** the Motion of BRC and **DISMISS** the third count of the complaint.

This recommended Partial Initial Decision respecting Niglio in the first count and BRC in the third count, may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

5/24/89
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

5/26/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 26 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

ORDERS CONCERNING DISCOVERY

1. Bogatin's attorney requested relief from the Division's request to him to permit the Division to interview Bogatin. Since the request was made to the attorney and not to Bogatin, the relief requested is **DENIED**.

2. BRC's attorney requested relief from the Division's request to a Senior Vice President of BRC to appear for an interview. The request was not made to the attorney of record. I **GRANT** the motion and **ORDER** the Division to make all requests to interview persons who hold a position equivalent to a casino qualifier through the attorney of record during the pendency of this matter.

3. BRC objects to the Division's discovery request of May 5, 1989 which demanded the following:

1. Any marketing manuals, memoranda, documents, letters or tapes which refer or relate to BRC's marketing strategies, marketing techniques or policies regarding premium players.

2. Any information, inclusive of documents and memoranda of meetings, relating to how BRC's marketing strategies for premium players are implemented and the methods by which BRC's staff is informed of the marketing strategy.

3. Any information, inclusive of internal correspondence, which relates to how management monitors compliance with and evaluates the implementation of BRC's marketing strategy for premium players.

4. Any information regarding instruction or training given to employees including Nicholas Niglio and Rachel Bogatin on the treatment of premium players and BRC's policy regarding the treatment of premium players.

The purpose of the request was to determine what instruction, if any, was given to BRC employees relating to discrimination and equal opportunity during the course of employment. The demand therefore is too broad and is alleged to be onerous. I **ORDER** that the demand for discovery be limited to such marketing manuals, memoranda, documents, etc. which refer either directly or indirectly to discrimination and/or equal opportunity during the course of employment.

4. All outstanding demands for discovery must be completed by Wednesday, **May 24, 1989.**

AMENDMENT TO PREHEARING ORDER

Paragraph 1.D. of the Prehearing Order is amended to add the italicized material below.

1.

D. Did respondent Boardwalk *and/or Rachel Bogatin* instruct Carol Ungerer not to supervise the play of Robert Libutti as she is required to do pursuant to N.J.A.C. 19:45-1.12(a) and Boardwalk's own internal controls on May 13, 1988.

AMENDMENT TO PLEADINGS

At the oral argument on May 16, 1989, the Deputy Attorney General requested leave to file an amended complaint. He wished to complain that the conduct of Niglio and Bogatin raise character, honesty and integrity issues. The possession of these characteristics is a requirement for continued casino employee licensure pursuant to N.J.S.A. 5:12-89b2 and 90b. I mistakenly advised the Deputy Attorney General to file such a motion with me. However, the rules do not provide for an ALJ to retain jurisdiction after an initial decision has been filed. Therefore it would be inappropriate for the Deputy Attorney General to file such a motion with the undersigned with respect to Niglio who is the subject of the partial initial decision. N.J.A.C. 1:1-18.1(h).

This Order may be reviewed by the Casino Control Commission either upon interlocutory review, pursuant to N.J.A.C. 1:1-14.10, or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

5/24/89
DATE

EDGAR R. HOLMES, ALJ

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6493-88
AGENCY DKT. NO. 88-424

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
BOARDWALK REGENCY
CORPORATION, d/b/a CAESAR'S
ATLANTIC CITY, AND
RACHEL BOGATIN, CASINO
SHIFT MANAGER; Respondents.
NICHOLAS NIGLIO, PARTICIPATING

Timothy Ficchi, Deputy Attorney General and **Fredric E. Gushin**, Assistant Director, for Petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Gregory Parlimen, Esq., for respondent Boardwalk Regency Corporation (Pitney, Hardin, Kip and Szuch, attorneys)
Jack Gorny, Esq., for respondent Rachel Bogatin (Horn, Kaplan, Goldberg, Gorny and Daniels, attorneys)
Lloyd D. Levenson, Esq., for participant Nicholas Niglio (Cooper, Perskie, April, Niedelman, Wagenheim and Levenson, attorneys)

Record Closed: June 16, 1989 Decided: August 10, 1989

BEFORE **EDGAR R. HOLMES**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) alleges that Boardwalk Regency Corporation (Caesars) removed black and female dealers from a craps table and substituted white male dealers for them in order to gratify the perceived wishes of a casino patron. It alleges that this transfer of individuals was effectuated by Nicholas Niglio (Niglio) and Rachel Bogatin (Bogatin) and that, in addition, Bogatin instructed a female pit boss not to "watch" the patron play, although a pit boss is required by Rule to supervise the game.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on June 26, 1988, alleging in the first count that Caesars, Niglio and Bogatin violated N.J.S.A. 5:12-134(b) and N.J.A.C. 19:53-1.5(a), by failing to afford an equal opportunity to certain Caesars' employees because of their race, color and sex. The Division alleged in the second count that respondent Caesars and participant Bogatin violated N.J.A.C. 19:45-1.12(a)(6) and Caesars' internal supervision controls by directing a pit boss not to "watch" the conduct of the craps game at table eight on May 13, 1988. In the third and final count, the Division alleged that respondent Caesars violated N.J.S.A. 5:12-96(a), and its Certificate of Operation, by failing to adhere to the certificate and by failing to operate the casino in accordance with Title VII of the Civil Rights Act of 1964 and New Jersey's Law Against Discrimination. N.J.S.A. 10:5-1 et seq. (NJLAD).

The respondents answered the complaint and requested a hearing pursuant to N.J.S.A. 5:12-107. The matter was transmitted to the Office of Administrative Law (OAL) on September 1, 1988, to be heard 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 May 16, 1989, the respondents moved for Summary Judgment.

By way of a partial initial decision filed on May 24, 1989, the motions of Niglio and Bogatin to dismiss count one of the complaint as it applies to them was granted.

The motion of Caesars to dismiss count one of the complaint as it applied to it was denied and the motions of Bogatin and Caesars to dismiss count two were denied. The motion of Caesars to dismiss count three was granted. Niglio then moved for participation pursuant to N.J.A.C. 1:1-16.4 et seq. Participation was granted on the grounds that a full determination of the case could substantially, specifically and directly affect him. He may be subject to a future proceeding as a result of his testimony or the testimony of others in this proceeding.

A plenary hearing convened on June 5, 1989 and was concluded on June 16, 1989. The time in which to file an initial decision was extended by Order of the Commission until August 14, 1989.

ISSUES

The issues identified at a prehearing conference held on December 19, 1988, and amended during the hearing, which were not disposed of by the partial initial decision are:

A. Did respondent Nicholas Niglio intentionally discriminate against Joel Respes, Pamela Jiacopello, and/or Deborah O'Kane on May 13, 1988, by reassigning them and replacing them with white male gaming employees so as to provide one Robert Libutti, a patron, with an all white male gaming staff?

B. Did respondent Rachel Bogatin intentionally discriminate against Joel Respes, Pamela Jiacopello, Deborah O'Kane, Mary Ann Egeli, and/or Catherine Daidone on May 7, 1988 and/or on May 13, 1988, by reassigning them and replacing them with white male gaming employees so as to provide Robert Libutti, a patron, with an all white male gaming staff?

C. If the allegations of A and B above are proven, is respondent Caesars liable for the actions of Niglio and/or Bogatin?

D. Did respondent Caesars and/or Rachel Bogatin instruct Carol Ungerer not to supervise the play of Robert Libutti as she is required to do pursuant to

N.J.A.C. 19:45-1.12(a)6 and Caesars' own internal controls on May 13, 1988?

G. Whether the allegations set forth in issues A, B and/or C above, if proven, violate N.J.S.A. 5:12-134b and/or N.J.A.C. 19:53-1.5(a)2?

I. If the allegations set forth above are proven, what penalty, if any, should apply?

SUMMARY AND DISCUSSION OF DOCUMENTARY AND TESTIMONIAL EVIDENCE

The Casino Control Act (Act) requires an applicant for a casino license to agree to afford an equal employment opportunity to all prospective employees consonant with N.J.S.A. 10:15-1 et seq., the New Jersey Law Against Discrimination. N.J.S.A. 5:12-134b. Paragraph c of Section 134 of the Act requires the applicant to formulate and abide by an affirmative action program of equal opportunity.

In addition, the Commission enacted regulations to insure a balanced workplace in casinos. N.J.A.C. 19:53-1.1 et seq. The regulations require that the policy of nondiscrimination continue during the whole course of actual employment. N.J.A.C. 19:53-1.5.

Accordingly, Caesars prepared an affirmative action plan for the Commission in connection with its application for a Certificate of Operation in 1979. The plan was updated on April 3, 1980, August 15, 1980 and in September 1988.

Caesars stated policy is the provision of equal employment opportunity to everyone. It seeks out female and minority candidates. It provides, through its Upward Mobility Program and its Supervisory Skills Training Program, vehicles for identifying, training and promoting female and minority employees.

The Division disparages these efforts and offered into evidence the 1986, 1987 and 1988 reports of the Commission's Division of Affirmative Action and Planning in order to show that Caesars was not in compliance with the Act or its own Affirmative Action Plan.

These reports are chatty but they tend to ramble. In one place they chastise Caesars for being in last place among the casinos in a category of female employment, in another place they administer a pat on the back to Caesars for showing gains in a category of minority employment. Apparently there is an ongoing dispute between Caesars and the Division of Affirmative Action and Planning over who is responsible for keeping statistics of female and minority employment by building contractors.

The best, or worst, that can be said about Caesars' record of affirmative action, according to these reports, is that Caesars has achieved mixed results in maintaining affirmative action goals.

Caesars offered rebuttal evidence by way of tables prepared by the Division of Affirmative Action and Planning of the Commission for the periods ending March 31, 1987, March 31, 1988 and March 31, 1989. These tables merely confirm that Caesars, like other casinos, has achieved mixed results in affirmative action.

The gravamen of the complaint filed in this matter, however, is not a failure by Caesars to maintain affirmative action goals; it is that very specific instances of conduct were discriminatory.

There does not appear to be much conflict in this case about what actually happened. Black and female dealers at Caesars were moved to other tables and replaced by white male dealers to accommodate a player who was perceived to favor white male dealers at the craps table and a female pit boss alleges she was instructed not to "watch" his play. The conflict in the case is over who gave the order to transfer the dealers and what was intended by the order given to the pit boss which she interpreted to mean that she was not to "watch" the game.

The resolution of this conflict is essential for the penalty phase of the case. Obviously the higher up into casino management the origins of the conduct can be traced, the more grave the conduct appears. Certainly a racial squabble among low level employees, especially in a company actively pursuing an affirmative action program, although reprehensible in itself, may not lead to the conclusion that the employer, in its corporate capacity, has a failed policy or requires a penalty to force it to take a corrective action. On the other hand, where the conduct reflects a

corporate policy, drastic measures may be required. In order to illustrate the conflict, the testimony of the witnesses is summarized below.

William Frasco is an audit agent for the Division and has been assigned to Caesars since August of 1986. He was assigned to review the gaming activity of Robert Libutti. of whom it was rumored that he preferred white male dealers to black or female dealers at his table. He discovered that Libutti gambled at Caesars on April 1, April 30, May 7 and May 13, 1988. On April 1, 1988, Libutti gambled about an hour and placed average bets of $4,400. On April 30, 1988, Libutti gambled about an hour and a half and made average bets of $4,500. On May 7, 1988, Libutti gambled approximately one hour and 25 minutes and his average bet was $8,000. On May 13, 1988, Libutti gambled for a little over two hours beginning at approximately 7:10 p.m. and his average bet was about $6,000. Libutti's total loss over the four days was $15,600.00.

These kinds of records are maintained for several reasons, one of which is to "rate" players in order to bestow complimentary items and services upon them. Libutti was a rated player and considered to be a "high roller," which is, apparently, a term of great esteem in gambling argot. It describes a person who wagers vast sums of money upon insignificant events such as the turn of a card or the throw of the dice. Accordingly, Libutti was a favored person in casinos.

Lyndon Stockton is a Senior Marketing executive for Caesars World Marketing Corporation; a sister corporation to Caesars . He was first employed on May 12, 1988. His major function is to solicit table game customers for Caesars' Atlantic City and Tahoe casinos. He does this by mail, telephone and personal contact. He frequents sporting events and restaurants in search of qualified customers. He remembers their birthdays and anniversaries with phone calls or flowers. He develops strategies for introducing players to Caesars and maintaining their interest in the casino.

Stockton knew Libutti before he worked at Caesars. Stockton first met Libutti when he, Stockton, worked at Trump Plaza as a casino host. On May 13, 1988, Stockton got a phone tip from someone at Trump Plaza that Libutti was on his way over to Caesars to play craps. Stockton met Libutti at the door. A table had already been roped off for Libutti's party. Stockton ordered Libutti's favorite brand of

champagne and the special glasses Libutti is fond of. He stood with Libutti as he gambled to insure that Libutti was comfortable. Although he had heard rumors that Libutti was abusive, Stockton said he never saw Libutti abuse anyone. He said that any rumors concerning Libutti's preference for white male dealers were false. He said Libutti was not a racist or a bigot. Stockton said that he knew this because he, Stockton, was black, and had hosted Libutti in Trump Plaza for years without incident.

Mario DeLuca has been employed at Caesars since its opening in 1979. He has been a craps dealer, a blackjack dealer, a box person, and a floor person with pit boss credentials who can occasionally fill in as a pit boss. A craps pit boss is responsible for the eight craps games which comprise the pit. A floor person is responsible for supervising one game; dealers and box persons actually operate one game. Floor persons, box persons and dealers are supervised by the pit boss. A pit boss observes the games to make sure correct procedures are followed and resolves disputes beyond the jurisdiction of the floor person. A pit boss is also responsible for the chips and money count at each table and for the work schedule of the crew.

DeLuca testified that as a pit boss for Caesars he has never been told not to "watch" a game. On April 30, 1988, he was told by Nicholas Niglio, the assistant casino manager, not to "crowd" a game played by Robert Libutti at table eight in his pit. An assistant casino manager is one step above a shift boss who supervises pit bosses.

DeLuca did not define the expression "crowd a game". In answer to a question, he acknowledged the existence of two expressions common in casino argot: "hawk the game" and "sweat the money." He defined only the expression "sweat the money." When a casino employee "sweats the money", the employee stands close to a losing table and assumes a "nervous" or "irritable" expression. He said Caesar's policy was not to "sweat the money."

As a result of being told not to "crowd the game" DeLuca observed Libutti's play from approximately six or eight feet away from the craps table. He did not feel that the instruction diminished his capacity to supervise the game. He recalls talking to Carol Ungerer who was the floor person on the next table from Libutti. He told her why he was watching Libutti's play from her table, table seven, and not from

table eight, Libutti's table, but he does not recall what was actually said. He recalls that she began to watch Libutti's play and Richard Stack, the shift boss, told her not to watch table eight. He noted that she was embarrassed.

DeLuca also identified Pamela Jiacopella, Joel Respes and Debra O'Kane as competent employees of Caesars.

DeLuca recalled that two black women were floor persons on Libutti's table on April 30, 1988.

Maryann Egeli is a dice dealer and boxperson for Caesars. A dice dealer accepts bets and paces the game. She says they usually have fun. On May 7, 1988, she worked the 6:00 p.m. to 2:00 a.m. shift. Many employees have staggered starting times. As a result, a witness may refer to two different pit bosses or shift managers during a single shift. Egeli was a dealer on table 17, pit four. Joseph Bochen was her pit boss that night and Richard Stack was the shift boss. Stack came around and put reserve signs on her table. He told her a big player was coming in and that she would be removed from the table because the "man didn't want any women on the game." Joseph Bochen told her the "man" was Libutti. At 8:30, her break time, she was moved to a different table by Joseph Bochen, her pit boss. Libutti had not yet arrived. She was replaced at table 17 by a white male. During the evening she heard from other dealers that Libutti preferred only white males on his game. She testified that she was shocked by the move and has instituted suit against Caesars.

At a sworn interview Egeli told the Division that she "just figured this guy (Libutti) was superstitious, didn't want women around. It really didn't bother (her)." At the hearing she explained this discrepancy in her testimony by saying "You learn not to say too much ... So I would like to keep my job ... So I didn't say anything."

Egeli testified that as a result of her move, she lost no income because dealers pool their tips. She also testified that she instituted suit because after she thought about the incident she became disturbed. She concluded her testimony by saying that she was 29 years old, and she had never before experienced discrimination solely because she was a woman.

Catheryn Daidone has been employed by Caesars for nine years. She was a box person on May 7, 1988, and has since become a floor person. On May 7, 1988, she was assigned to table 17 pit four on the swing shift with Maryann Egeli. She said Nicholas Niglio came by and told Joe Bochen, the pit boss, to reserve the table by roping it off. Later, Joe Bochen told her to move to another game because a man was coming in who didn't like women or blacks on the game. Her co-workers told her the man coming in was Libutti. Bochen also told her that Libutti didn't want the pit boss "looming over the table watching the game over his shoulder." Daidone was replaced at table 17 by a white male. She says she wasn't bothered by the move because she knew it did not have anything to do with her competence.

Joseph Bochen has been employed by Caesars for 10 years. He is a pit boss. He said that he had never been told not to "watch" a game. He defined the expression "hawking the game" as standing close to the table, with negative body language, arms crossed, stern demeanor, pacing near the table, overtly worrying that the table is losing money. He equated the expression "hawking the game" with "sweating the game."

Bochen recalls that at about 6:30 one night in May, Rachel Bogatin, shift manager, told him that Libutti would be playing on a reserved table and that Libutti did not want women or blacks or minorities dealing to him. She also asked him to arrange the table accordingly.

Bochen then moved Egeli and Daidone to another table. He said he explained his actions to them and that they acquiesced in the move. They were replaced with white males. Later that evening Libutti came to play at table 17. Bochen said that Rachel Bogatin also told him that Libutti doesn't "like pit bosses hawking the game." He said this was a common term in the business and he knew exactly what she meant. He said it is Caesars policy that no one is to hawk a game. The employees are told that there is "plenty of money", so there is no need to "sweat the game."

As a result of this instruction Bochen did not show Libutti any extra attention other than to make eye contact and smile at him. He continued to monitor the game and the chip situation with the floorman and he observed the game from the pit boss's podium.

Joel Respes is black. He is a floor person employed by Caesars for nine years. In 1983 he received the company's Superstar award. On May 13, 1988, he was on the day shift, 12:45 p.m. until 8:45 p.m. He was a relief floorperson assigned to pit two and was to relieve the floorpersons on tables eight, one, seven and two. He said that Carol Ungerer was the pit boss and that Jack Nolan was the shift manager.

Respes started his shift on table eight relieving the floor person there. The betting minimum on table eight was raised from $5 to $500 to accommodate a "high roller." The employees speculated that Libutti was coming in to play. Libutti's supposed preference for white male dealers was discussed.

Shortly thereafter, two female employees of Caesars were removed from the table, Debbie O'Kane, a dealer, and Pamela Jiacopello, a box person. Two white males replaced them. Carol Ungerer, the pit boss made the changes. She said to Respes "Well, I had them taken care of. I don't know what I'm going to do with you yet." Later, Respes was switched to table seven and the table seven floor person, a white male, took Respes' place at table eight and remained there. At a few minutes after seven, Libutti arrived and played on table eight. Respes said he asked Ungerer why the switch was make and she told him "Well, this is what Caesars wants. They want to avoid any confrontation or any unusual circumstances."

Respes said that Ungerer also instructed the entire pit not to look at table eight and to exit the pit from the other side. Ungerer told Respes she was not allowed to "look" at the game and that "they don't even want me over there." He says she did not go near table eight as a result.

After work Respes left the casino but returned after a few minutes and related the events of the evening to a representative of the Casino Control Commission. She took his report and advised him to notify the affirmative action officer for Caesars, Roland Coleman. The next day, he did notify Coleman.

Respes said that the incident caused him to feel hurt, embarrassed and humiliated. It reminded him of the treatment his father received as a high school student in Philadelphia. His father wanted to be an engineer. A white male teacher told his father that he couldn't become an engineer because he was black.

Respes asked rhetorically: "How much do I have to accomplish? How much do I have to do?"

Respes told his children what had happened. He told them he felt as though he had encountered a sign that read "For Whites Only."

Roland Coleman, Caesar's Affirmative Action Officer, told Respes that the matter would be investigated. Coleman told Respes that he had already spoken to the president and two vice presidents concerning the matter and that the company did not condone the action. Respes subsequently filed suit against Caesars over the incident.

Respes says that Bogatin came to him after the event and talked to him "off the record" in Niglio's office. She said she was sorry it happened and that it never should have happened. She said she wished she "had the guts to stand up and say No! This is not right! It is wrong!"

Deborah O'Kane has been employed at Caesars for ten years. She started as a cocktail waitress and, through the Upward Mobility Program, has become a craps dealer.

O'Kane was on the 1:00 p.m. to 8:00 p.m. day shift on May 13, 1988, assigned to pit two, table eight. On that day, after her break, O'Kane was reassigned to another table by the pit boss, Carol Ungerer. Ungerer told her earlier that she would be reassigned because the table was reserved for Libutti and that he didn't want women on the table. The table went "dead" after the minimum bet was raised to $500. Because she was bored and knew she was going to be transferred anyway, O'Kane asked Ungerer to transfer her to a busy table and her request was honored.

O'Kane has joined with Respes and Egeli in the civil suit against Caesars.

Pamela Jiacopello has been employed at Caesars for 12 years, beginning as a telephone operator and successively becoming a front desk clerk, a rooms controller, a craps dealer and now a boxperson. On May 13, 1988, she was a relief box person on the 1:00 p.m. to 9:00 p.m. shift assigned to pit two. When Libutti arrived she was relieving the box person on the table reserved for him. She was "tapped off" the

game by a white male. She knew this was going to happen because the pit boss, Carol Ungerer, previously told her it would happen. Ungerer had explained to her that Libutti did not like women on the game.

Jiacopello said that she was not offended by being removed from table eight. She says she and O'Kane joked abut Libutti's preferences. She said she had heard about Libutti and was glad she did not have to serve as the box person on his table.

Craig Isaia is Casino Administration Director for Caesars. He has been employed at the casino for ten years. He reports to Nicholas Niglio. He related that he is responsible, among other things, for overseeing the evaluation of casino employees and for scheduling casino employees. He testified that Maryann Egeli, Catherine Daidone, Deborah O'Kane, Joel Respes and Pamela Jiacopello were all competent employees capable of handling the play of a high roller.

Carol Ungerer is a craps floor person employed at Caesars for ten years. She sometimes worked as a pit boss because she is dual rated (both as a floor person and as a pit boss) but she has elected not to work as a pit boss any longer.

Prior to May 13, 1988, she recalls an occasion when Libutti gambled on a table next to hers on a night she was a floor person. This must have been on April 30, 1988, according to the testimony of others.

She recalls watching Libutti play from her vantage point as a floor person on an adjacent table. Richard Slack came up to her and told her that Nick Niglio said to him that he thought Ungerer was the pit boss because she spent so much time watching Libutti's play. She acknowledged that this reprimand was proper. Her job was to supervise the play on her table.

On May 13, 1988, Ungerer was working as a pit boss in pit two on the 12:45 to 9:30 p.m. shift. Shortly after she opened she was told by John Miller, the shift manager, to raise the minimum on a table to $500. She learned Libutti was expected. He arrived at approximately 7:05 p.m.

Ungerer recalled her conversation with Mario DeLuca when he was the pit boss during Libutti's play on April 30th. She recalled that he told her he was not

supposed to be near Libutti's table or words to that effect. In addition, she claims that Bogatin told her not to "watch" the game. Although on cross examination she said she might have only "understood" she was not to "watch" the game.

In any case, Ungerer understood the instruction in its literal sense and slavishly followed it, even hiding behind a pillar to block her view of Libutti.

Later in her testimony, Ungerer recalled that Richard Slack found her behind a pillar and told her she did not have to hide. She says he told her "you just aren't to watch the game." She also acknowledged that at her interview with the Division, she said several times that she did not know who instructed her "not to watch the game."

Ungerer says she was also told on May 13, 1988, by Rachel Bogatin "that there weren't to be any female personnel on the table." This was at approximately 4:00 or 5:00 p.m.

Earlier, she says she had asked Debbie O'Kane, who was assigned to Libutti's table, which was not yet active, if she wanted to work table one so as not to be bored. O'Kane said "yes" and went to table one. When Libutti arrived, Ungerer did not bring O'Kane back to work at Libutti's table.

Ungerer says that Bogatin also told her to take Respes off the game "...to avoid a possible confrontation later." Ungerer replaced Respes with a white male. She told Respes she was doing it "... to avoid a confrontation later on." Ungerer says she asked Bogatin twice if she meant for her to move Respes. She says she asked her twice because she sensed trouble.

Ungerer testified several times that she was a "stickler for rules." Unfortunately she was not a stickler for accuracy. She was not untruthful in the sense that she consciously misrepresented the truth. She was merely careless of the truth. She interpreted the events of April 30, 1988, to mean that the pit boss should not, literally, watch the game. Therefore, she interpreted every order or instruction thereafter to mean "do not watch the game," even if the words used were different. This was obvious during both direct and cross examination. In response to questions, she would say she "probably" said this or that. In other words, she

assumed that she said something appropriate at the time and then supplied an appropriate answer to the question at the hearing.

Rachel Bogatin is a dual rate shift manager at Caesars and has been employed there for ten years. She worked her way up from blackjack dealer to floor person to pit boss to dual rate shift manager. She reports to Nicholas Niglio.

On May 7, 1988, Bogatin had been a dual rate shift manager for about four weeks. Libutti played at the casino that evening. Bogatin denied that she told Joe Bochen to move dealers on May 7, 1988, because it was not until sometime between May 7, 1988, and May 13, 1988, that Bogatin heard the rumor that Libutti was verbally abusive or that he preferred white males to deal to him.

On May 13, 1988, Bogatin met Niglio on the floor of the casino at about 5:20 p.m. She told him that they had raised the minimum at table eight in the expectation that Libutti was coming and had $5,000. chips on the game. She said that Niglio told her to "leave white males on the game." Later Bogatin asked Niglio what she should do about Ungerer. Niglio told her to leave her there, "she won't be watching the game anyway." Bogatin then told Ungerer "Don't stand on top of the game."

Bogatin left the casino floor on her break when Libutti arrived. When she returned she divided duties with Richard Slack, another shift manager, because he was more experienced at craps than she was. She did not see Libutti play except to walk through once in order to see what he looked like. She told Slack about Libutti's preference for white males.

Bogatin acknowledged telling Respes that she was sorry for the incident and that she promised him it would never happen again.

She also recalls that Niglio told her, just prior to their Division interview, that he had no idea about Libutti's preferences. She claims this remark stunned her because of the conversation she had with Niglio on May 13, 1988, at about 5:20 p.m.

Jeffrey Johnson is a dual rate pit manager employed ten years by Caesars. He was a pit manager on April 30, 1988, on the 8:45 p.m. swing shift. He was assigned

to pit two. He relieved Mario DeLuca, the day shift pit boss. DeLuca told him that Robert Libutti was playing on table eight and that Libutti requested that "pit managers not stand next to his game." He said this was not an unusual request. He also reported that Libutti's table was staffed with some women, one of whom was black. He said Libutti was not abusive.

Eric Reynolds has been employed as a training manager for Caesars for the past three years. He is experienced in the areas of training and development, affirmative action, employee relations and personnel. He developed the Upward Mobility Program at Caesars. He described the Upward Mobility Program, the Supervisory Training Program and the efforts of Caesars to recruit minority and female candidates for the programs. The Upward Mobility Program includes a unit on valuing diversity; i.e., emphasizing the salutory effect of a multi-cultural work force.

The Upward Mobility Program also deals with subjects such as "overcoming stereotypes," "getting into the club," "the glass ceiling," individual experiences of upward mobility and the "feelings" that accompany these experiences. He described Nicholas Niglio as a strong supporter of, and a vigorous participant in, the Upward Mobility Program.

In addition, Reynolds said that all new employees are given an orientation course which includes a segment on affirmative action, equal opportunity employment and sexual harassment.

John Groom is Senior Vice President of Casino Operations for Caesars Atlantic City. He has been employed by them for ten years. He recruited Nicholas Niglio away from Resorts. He wanted Niglio to improve staff professionalism and recruit qualified females and minorities to Caesars. He says Niglio has a reputation for expertise in these areas. He has been pleased with Niglio's performance in staff development and recruitment.

Groom recalled a meeting on May 16, 1988, at which time the transfer of Joel Respes was discussed. It was a high level meeting which included the president and chief operating officer of the casino, and others. They ordered an investigation. Groom also immediately advised the shift manager on duty that no personnel

would, in the future, be moved on account of sex or race. He asked Niglio to so advise all shift managers and to have them instruct pit managers of the policy. He also made the decision to move a dealer for any reason, the shift manager's decision rather than a pit manager's decision.

Groom acknowledged on cross examination that during his employment interview of Lynden Stockton (whom Groom also recruited), that Stockton included Libutti in his following.

Groom recalled that on May 13, 1988, he learned sometime during the day that Libutti was coming to play in the casino. That evening Groom introduced himself to Libutti at table eight. Stockton asked Groom at that time if he had heard that Libutti didn't like blacks or women on the game. Groom said he had not heard that. He found it so unusual that he wanted to share it with someone. He saw Niglio on the floor and told him about Libutti's preference. He noticed that Niglio was in a hurry; he estimated the time was about 6:30 p.m.

Jack Miller is a casino shift manager at Caesars. He was so employed on May 13, 1988. He reserved a table for Libutti on that day; table eight , pit two. Miller said Ungerer told him that she had advised O'Kane that O'Kane would be moved when Libutti arrived. He recalls she said to him that "they won't have to worry about moving me because I won't be watching the game."

Dan Geiger operates a limousine service. He produced a log book of his company which indicated that a limo was ordered for Mark Juliano at Caesars for 5:30 p.m. on May 13, 1988. He recalled that Niglio was with Juliano on that date and accompanied Juliano to Philadelphia. He said the limo left at 5:30 p.m.

Nicholas Niglio has been employed by Caesars for two and a half years. He is the assistant casino manager. He was formerly the training supervisor at Resorts casino. He included affirmative action and equal opportunity training in his supervision. He instituted an upward mobility program at Resorts.

Niglio emphasized his commitment to affirmative action and gave numerous illustrations of his success in finding and promoting female and minority workers at Caesars. For instance, during his tenure at Caesars, he claims 11 women and four

minority workers have been promoted to pit manager out of 18 total promotions. He claimed that he was notorious in Atlantic City casinos for recruiting away from other casinos qualified female and minority employees for Caesars.

On April 1, 1988, he was tipped off that Libutti was coming to Caesars to gamble. Libutti played in pit two where the pit boss was black. Libutti told a Caesars casino host that the table crew was very professional. Consequently, Niglio sent each one a commendation letter. The crew included an oriental male, an hispanic male and a white female. Niglio said that he never heard any of the rumors about Libutti's supposed preferences against black and female dealers, or pit bosses who "hawked" him, until after May 13, 1988.

On May 13, 1988, Niglio arrived at work at about 3:15 in the afternoon. He did office work until 4:00 p.m. when he attended a meeting in the executive suite. The meeting lasted until about 5:15 p.m. Niglio said he left the casino with Mark Juliano to attend a viewing in Philadelphia. On his way out through the casino, he spoke to several people. He has no recollection of speaking to Rachel Bogatin.

Niglio says that the limo ordered for that date departed for Philadelphia at 5:30 p.m. and returned at 10:00 or 10:30 p.m. On his return Niglio learned that Libutti lost $200,000 that evening.

The next day, according to Niglio, he learned for the first time about the transfer of black and female dealers. He emphasized that the order to transfer black and female employees did not come from him as Bogatin alleges. He said he never knew about Libutti's alleged preferences.

Niglio said that sometime after May 7, 1988, but before May 13, 1988, Niglio discussed Libutti with Stockton. Stockton described Libutti to Niglio as aggressive, imposing and intimidating. He says Stockton did not tell him about any preferences for white male dealers.

Niglio also claims that he could not have been told of Libutti's preferences for white male dealers by Groom as Groom alleges because he was in Philadelphia at the viewing at the time when Groom says he told him about the preference. Niglio says

he learned from Coleman, who did the investigation for Caesars, about the conflict with Bogatin in their respective testimony.

Roland Coleman is Vice President for Human Resources at Caesars and has been so employed for approximately one year. He has been with Caesars since August of 1983, first as Director of Employee and Labor Relations, then as Executive Director of Administration, then as Vice President for Administration until his recent promotion.

On May 16, 1988, Joel Respes reported to him the transfer which occurred on May 13, 1988. Respes said that he had been discriminated against and humiliated by the transfer. Coleman told Respes that Caesars did not condone the transfer. Coleman reported the incident to counsel, to the senior Vice President for Governmental Affairs and to the Chief Executive Officer of the casino. A high level meeting convened and Coleman was requested to conduct an investigation. Coleman took statements from numerous persons. He was unable to conclude who was responsible for initiating the transfers on May 13, 1988, because Bogatin and Niglio gave conflicting versions of the events. He did not investigate the May 7, 1988 incident.

Coleman also described the reports filed with the Commission which illustrate the progress of licensees in complying with N.J.A.C. 19:53-1.5e. The regulation sets employment goals for minority and female workers in the casino hotel industry.

Coleman discussed in great detail the percentages of minority and female representation in various casino department job categories and Caesars ranking with respect to other casinos. For instance, he testified how the industry average for certain casino positions compared with Caesars and Caesars' rank among casinos. His testimony can be illustrated by the following table:

1987			1988			1989		
Industry Avg/Caesar/Rank			Industry Avg/Caesar/Rank			Industry Avg/Caesar/Rank		
Minority Dealers								
29%	32%	R3	31%	34%	R2	32%	34%	R4
Minority Boxperson								
12%	10%	R6	14%	13%	R5	17%	18%	R4
Minority Floorperson								
16%	21%	R2	17%	21%	R3	17%	22%	R1
Minority Pit Boss								
17%	19%	R4	17%	25%	R2	15%	18%	R2
Female Dealers								
39%	34%	R10	40%	35%	R12	40%	38%	R8
Female Boxperson								
19%	15%	R7	24%	19%	R8	23%	17%	R8
Female Boxperson								
35%	33%	R5	35%	35%	R7	34%	34%	R7
Female Pit Boss								
24%	23%	R5	27%	25%	R6	29%	39%	R2

Alfred J. Cade, Senior Vice President for Governmental Relations, has been employed by Caesars for ten years. He discussed Caesars commitment to equal opportunity employment and affirmative action. He traced the history of its efforts since 1979. He also discussed Caesars' role with the Casino Redevelopment Investment Authority and Caesars' direct investment project, the Regency.

FACTUAL AND LEGAL DISCUSSION

I. Ungerer freely admits that on May 13, 1988, she reassigned employees solely on the basis of their sex or race. Her rationale for making the move was to avoid a possible confrontation with Libutti. She says she was told this by Rachel Bogatin.

Bogatin acknowledges that she told Ungerer to move the employees on May 13, 1988, on the advice of Niglio. Niglio denies that he told Bogatin to make the move. Niglio says he left for Philadelphia at 5:30 p.m. promptly that evening and has no recollection of talking to her about it. He recalled that he and Bogatin were in a meeting together from 4:00 p.m. to about 5:00 p.m., when Bogatin left. Niglio says he left the meeting at 5:15 p.m. and left for Philadelphia by 5:30 p.m. after passing through the casino. He recalled two or three conversations with others on his way out of the casino but recalled none with Bogatin. The log book and the testimony of Geiger appear to back up Niglio's alibi. But John Groom recalls telling Niglio about Libutti's supposed preferences at approximately 6:30 p.m. on May 13, 1988, when Niglio says he was in Philadelphia.

A curious inconsistency appears in Niglio's reliance upon the log book showing that he departed the casino at 5:30 p.m. on May 13, 1988. Niglio says he returned in the limo from the viewing to Caesars at about 10:00 or 10:30 p.m. that same night. But the log book indicates that the limo was only gone for two and a half hours. If so, Niglio would have returned to the casino at 8:00 p.m. if he left at 5:30 p.m. But if Niglio is correct that he returned at 10:00 or 10:30, then the limo must have left closer to 7:30 p.m., giving Niglio time to speak both to Bogatin and Groom just as they recall the events.

Another instance which supports Bogatin's version of an event as against others, concerns the May 7th transfer. On May 7, 1988, Maryanne Egeli and Catheryn Daidone were transferred by their pit boss Joseph Bochen. Joseph Bochen

said shift manager Rachel Bogatin told him to make the transfer. Rachel Bogatin denies she told Joe Bochen to do this. But Maryanne Egeli testified that shift manager Richard Slack was the one who told her she would be moved. This supports Bogatin's version of that event and her credibility generally.

Other testimony which casts doubt on Niglio's version of an event includes DeLuca's statement that as early as April 30, 1988, Niglio told him not to "crowd" a game played by Libutti in DeLuca's pit. But Niglio has insisted he did not know any of Libutti's supposed preferences until after May 13, 1988.

I believe that Niglio told Bogatin that she should transfer the black and female dealers. I believe that he did it in order to humor Libutti, a high roller.

Groom's description of Niglio and the reasons he recruited him away from Resorts, together with Niglio's own aggressive demeanor and obvious allegiance to the company strongly suggest that Niglio strives as hard as he can for a successful career at Caesars. He is interested in profits and will accommodate preferred customers to the best of his ability. In this case, I do not think he considered the rights or feelings of the transferred employees. Niglio was interested in one thing and in one thing only; how to attract and keep Libutti coming back to Caesars. Nevertheless, he intentionally transferred the employees and that transfer was an act of discrimination. Furthermore, no one disputes that the conduct was an act of discrimination. Joel Respes, Deborah O'Kane and Pamela Jiacopello were told to stand aside for a white man. They might just as well have been directed to the back of the bus or to separate drinking fountains.

Nicholas Niglio is not a mere employee of Caesars, a peer of Respes, et al., he is a casino executive with access to the very top level of management. By regulation, he is invested with the authority to operate table games according to policies adopted by the casino's board of directors. N.J.A.C. 19:45-1.12 (a) 7, and 8. His acts bind the casino. This is a strictly regulated industry. N.J.S.A. 5:12-1b(6) and (13) state:

> (6) 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.
>
> (13) It is in the public interest that the institution of licensed casino establishments in New Jersey be strictly regulated and controlled ....
>
> In addition, N.J.S.A. 5:12-130g provides:
>
> It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself.

This language was cited and approved by the Appellate Division in Dept. of Law v. Boardwalk Regency, 277 N.J. Super. 549, 555 and 556 (1988). In that case, the court strictly construed the provisions of the Casino Control Act which regulated gambling by underage persons. In the instant case, the provisions of the Casino Control Act alleged to be violated, N.J.S.A. 5:12-134(b) is to be construed "consonant" with the N.J.L.A.D. N.J.S.A. 10:5-1 et seq. That statute elevates the opportunity to obtain employment to a "civil right." N.J.S.A. 10:5-4. It makes it unlawful for an employer to discriminate in "terms, conditions or privileges of employment." N.J.S.A. 10:5-12.

To insure that these objectives are accomplished, the Casino Control Act gave the Commission extensive power. In section 135 of the Act, it granted the Commission the authority "to impose such sanctions as may be necessary to accomplish the objective of section 134." One of the objectives of section 134 is to require casinos to "abide by" the affirmative-action program of equal opportunity it submits as a requirement of casino licensure. N.J.S.A. 5:12-134C. This is further required by N.J.A.C. 19:53-1.5(a), which extends the guarantees of nondiscrimination throughout the entire course of employment.

II. It is obvious that pit bosses and shift managers were aware that Libutti did not like anyone "hawking" his game as early as April 30, 1988. DeLuca, a pit boss,

reports that he was told this by Niglio on April 30, 1988. Johnson, a pit boss who relieved DeLuca, said that DeLuca told him not to stand next to Libutti's table. DeLuca and Ungerer both recalled that shift manager Richard Slack knew on April 30, 1988 that Libutti did not want to be closely watched while he played. Apparently some high rollers do not appreciate a crowd when they gamble and some do not appreciate a representative of management standing by the craps table or blackjack game, wringing their hands in dismay whenever the player is ahead.

Caesars has adopted a policy which prohibits its employees from exhibiting such behavior. Caesars has told its employees that there is no need for such behavior since the casino has adequate funds to pay off winners. It is a reasonable policy.

In this case, the Division alleges that Caesars and Rachel Bogatin, in their effort to humor Libutti, prohibited a pit boss from performing her duty to supervise a craps game by ordering her not to "watch" Libutti's play contrary to N.J.A.C. 19:45-1.2(a)(6). The regulation cited makes the pit boss the third level supervisor of the craps table in her pit.

The pit boss admits that she literally did not watch Libutti's play. She was, however, too unsure of what Bogatin actually told her to render either Bogatin or Caesars liable for an infraction of this regulation. Bogatin says she told Ungerer not to "stand on top of the game." Bogatin was a credible witness, Ungerer was not. Bogatin's instruction was not a direction to Ungerer to violate her duty as a pit boss and leave the craps table unsupervised. It was a reminder of Caesars' policy not to crowd the game; it was a legitimate deference to a high rollers preference for a little anonymity; it was an instruction to use tact and discretion.

FINDINGS AND CONCLUSIONS

I **FIND** that Nicholas Niglio intentionally discriminated against Joel Respes, Pamela Jiacopello and Deborah O'Kane on May 13, 1988, by reassigning them and replacing them with white male gaming employees so as to provide one Robert Libutti, a patron, with an all white male gaming staff.

I **FIND** that Rachel Bogatin intentionally discriminated against Joel Respes, Pamela Jiacopello and Deborah O'Kane on May 13, 1988, by reassigning them and

replacing them with white male gaming employees so as to provide Robert Libutti, a patron, with an all white male gaming staff.

I **FIND** that the Division has failed to prove by a preponderance of the credible evidence that Rachel Bogatin intentionally discriminated against Maryanne Egeli and/or Catherine Daidone on May 7, 1988.

I **FIND** that the Division has failed to prove by a preponderance of the credible evidence that Caesars and/or Rachel Bogatin instructed Carol Ungerer not to supervise the play of Robert Libutti on May 13, 1988.

I **CONCLUDE** that respondent Caesars is liable for the actions of Niglio and Bogatin on May 13, 1988.

I **CONCLUDE** that Caesars violated N.J.S.A. 5:12-134b and N.J.A.C. 19:53-1.5(a)2 on May 13, 1988.

PENALTY CONSIDERATION

In this case, the Division seeks the penalty of closure, and demands that Caesars pay full salary to its employees during the period of closure. At first blush, such a penalty seems reasonable.

Everyone knows that racism and sexism exist in the hearts and minds of many people. Racist and sexist jokes still travel well in our society. Racism and sexism are contemptible everywhere: when they are taught at home by word or deed, when they appear in social contacts, when they manifest themselves in the work place. When they appear in the guise of policy in a State regulated industry they must be openly and publicly excoriated.

In this case however, Caesars has not adopted a policy which is either racist or sexist in its application to employees. In fact, it has adopted sound policies of affirmative action and equal employment opportunities. These are required by the Casino Control Commission. Caesars honestly attempts to implement them. Caesars appears to be doing as well as, or better than other casinos in attracting and promoting minorities and women.

Many of the Caesars executives who appeared to testify in this case were black, albeit male. Any cynics who might assert that the appearance of these witnesses was based on their skin color and not the relevance of their testimony must keep in mind that their appearance is the best evidence that Caesars is committed to equal employment opportunity. Additionally, recent statistical evidence indicates that women are achieving middle level promotions at a high rate. In the table games department, in which these incidents occurred, it is doing better than average. In fact, Nicholas Niglio, the person responsible for ordering the transfers of black and female dealers, is an important person in the selection and training of female and minority persons for promotion in the table games department.

The action taken here was intended primarily to gratify and seduce a very big customer of the casino. Caesars wanted this customer to return again and again. He was a very high roller. There are various legal ways that a casino can reward high rollers. Complimentary services and items is the traditional way in the casino industry and is approved by the Commissions' regulatory scheme. N.J.S.A. 5:12-14a and N.J.S.A. 19:45-1.9. Unfailing courtesy and attention is another way, but may not be reciprocated by some classes of bettors according to the testimony in this case. Apparently the rudeness of losing bettors is routine in the industry. It must be stressful to casino employees.

Pandering however, as occurred in this case, must always be discouraged. This transfer of black and female dealers was insensitive, bizarre and traumatic. Respes articulated his injury best when he said that he felt as though he had encountered a sign that read: "For Whites Only."

Egeli's response was also classic; "You learn not to say too much ... So I would like to keep my job ... So I didn't say anything." One learns to endure.

Caesars, as well as other casinos, must never lose sight of the fact that a significant factor in their creation is their contribution to the general welfare, health and prosperity of the State and its inhabitants. N.J.S.A. 5:12-1b(1). The provision of dignified employment opportunities to area residents is a large part of the bargain.

A penalty must be exacted. In considering an appropriate sanction, seven factors must be considered pursuant to the Act. N.J.S.A. 5:12-130.

The conduct complained of created a risk to the public and to the integrity of gaming operations because it demoralized employees, disregarded law and regulation and exalted profits over common decency. If these actions became the standard by which all casinos operated, they would all be no better than disorderly houses.

The conduct complained of was a serious violation of N.J.S.A. 5:12-134c. Caesars did not abide by its guarantee of equal employment opportunity to all.

There was no justification for the conduct. In Caesars favor, no theory of justification or excuse was advanced, even though the testimony of some witnesses gave Caesars an opportunity to do so. Their defense of this case was handled in a sensitive and intelligent manner.

There is no indication that this action by Caesars was other than a singular and extraordinary action. Based upon the employment record of Caesars, it could not have been predicted. It surprised Caesars own management personnel. It never happened before, it has not happened since. It is best described as aberrant.

The corrective action taken by Caesars was not adequate. John Groom, Senior Vice President of Casino Operations, orally advised the shift manager, as soon as he heard about the incident, that no personnel would, in the future, be moved on account of sex or race. Groom also asked Niglio to so advise all shift managers and to have them instruct pit managers of the policy. Groom also made the decision to move a dealer for any reason a shift manager's decision rather than a pit manager's decision. He ordered an investigation. These actions were well taken. But they did not go far enough.

Throughout the hearing the Division elicited responses from witnesses that Caesars did not teach employees how to defend themselves from abusive patrons. The Division properly identified this failure as a problem which contributed to this incident. Caesars therefore, ought to study, adopt, promulgate and teach guidelines to all its employees which will assist the employee in handling the rude, unruly,

obnoxious, demanding, drunken, racist or otherwise bigoted player. If a player is not satisfied with a polite, competent and honest dealer, the player should be moved, not the dealer. Casino's exist to provide decent employment to decent people as well as to provide a source of revenue to the State and to the shareholders.

There was no evidence adduced that Caesars could not afford a monetary penalty. All of the evidence suggested that Caesars was financially sound and an industry leader.

This violation was intentional, albeit uncharacteristic of the respondent. Therefore, the provisions of this section are inapplicable which provide that guilty knowledge is not required in order to find a violation.

An appropriate penalty is the payment of a fine by Caesars of $15,600., the amount of money lost by Libutti. In addition, Caesars shall include in its orientation program for all new employees, a segment dealing with methods to identify and control the abusive patron. This segment shall be presented to all Caesars' employees regardless of their longevity with the company. Prior to presentation to employees, it shall be approved by the Commission.

ORDER AND DISPOSITION

It is **ORDERED** that respondent Caesars shall pay a fine in the amount of $15,600. to the Commission upon receipt of an invoice for the same, and,

It is **FURTHER ORDERED** that Caesars prepare a teaching segment for all present employees which is to be incorporated into the orientation course for all new employees that deals with methods to identify and control abusive patrons after approval of the said plan by the Commission. The teaching segment shall be submitted to the Commission for approval within six months of the final decision in this matter.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 10, 1989
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

8/15/89
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 15 1989
DATE

Jaynee LaVecchia/k
OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBIT LIST

For the Petitioner:

P-1 Investigative Report of Division Agent William Frasco dated June 1, 1988
P-2 Sworn Interview of Carol Ungerer dated June 2, 1988
P-3 Sworn Interview of Rachel Bogatin dated June 3, 1988
P-4 Sworn Interview of Richard Slack dated June 6, 1988
P-5 Sworn Interview of Joseph Bochen dated June 22, 1988 (Not Admitted)
P-6 Sworn Interview of Nicholas Niglio dated June 3, 1988 (Not Admitted)
P-7 Sworn Interview of Joel Respes dated June 2, 1988 (Not Admitted)
P-8 Sworn Interview of Pamela Jiacopello dated June 2, 1988 (Not Admitted)
P-9 Sworn Interview of Roland H. Coleman dated June 6, 1988 (Not Admitted)
P-10 Sworn Interview of Deborah O'Kane dated June 2, 1988 (Not Admitted)
P-11 Memorandum from Roland H. Coleman to Howard Bacharach dated May 26, 1988
P-12 Sworn Interview of Lyndon Stockton dated June 3, 1988 (Not Admitted)
P-13 Sworn Interview of John Groom dated June 20, 1988
P-14 Sworn Interview of Mario DeLuca dated June 6, 1988 (Not Admitted)
P-15 Sworn Interview of Maryann Egeli dated June 22, 1988 (Not Admitted)
P-16 Sworn Interview of Catherine Daidone dated June 22, 1988 (Not Admitted)
P-17 CCC Reports of the Division of Affirmative Action and Planning for BRC dated September 2, 1986
P-18 CCC Reports of the Division of Affirmative Action and Planning for BRC dated September 15, 1987
P-19 CCC Reports of the Division of Affirmative Action and Planning for BRC dated September 12, 1988
P-20 Affirmative Action Plan for BRC
P-21 IMO BRC transcript October 5, 1987pages 22 through 26

For the Respondent BRC:

BRC-1 Upward Mobility Program Nominations dated March 30, 1987
BRC-2 Upward Mobility Program Class Schedule
BRC-3 Upward Mobility Program Precis

BRC-4 Management Team Agreement
BRC-5 1988 Upward Mobility Recommendations
BRC-6 Supervisory Skills Training Program
BRC-7a,b,c Limousine Log
BRC-8 Niglio to Quo May 3, 1988
BRC-9 Niglio to Pena May 3, 1988
BRC-10 Niglio to McGarry May 3, 1988
BRC-11 Report on Affirmative Action and Planning by CCC (Not Admitted)
BRC-11a Report on Affirmative Action and Planning by CCC Table 6 1989
BRC-12a Report on Affirmative Action and Planning by CCC Table 6 1988
BRC-13a Report on Affirmative Action and Planning by CCC Table 6 1987

WITNESS LIST

For Petitioner:

William Frasco
Lyndon Stockton
Mario DeLuca
Mary Ann Egeli
Catherine Daidone
Joseph Bochen
Joel Respes
Deborah O'Kane
Pamela Jiacopello
Craig Isaia
Carol Ungerer
Rachel Bogatin

For Respondent BRC:

Jeffrey R. Johnson
Eric Reynolds
John Groom
Jack Miller
Dan Geiger

Nicholas Niglio
Roland Coleman
Alfred Cade

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-425
APPLICATION NO. 076737-22
OAL DOCKET NO. CCC 5078-89
ORDER NO. 90-16-8

APPLICATION OF GARY P. BRENNER, SR., FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 April 18, 1990,

IT IS on this 24th day of April 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly/gsm
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5078-89
AGENCY DKT. NO. 89-EA-425

GARY P. BRENNER, SR.,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Gary P. Brenner, Sr., petitioner, pro se

Norma L. Stancil, Deputy Attorney General, on behalf of respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: February 16, 1990 Decided: March 13, 1990

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

This matter arises out of petitioner's application for a casino employee license. Respondent filed an objection with the Casino Control Commission pursuant to N.J.S.A. 5:12-1 et seq. and the matter was transmitted to the Office of Administrative Law for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was conducted on February 9, 1990 and the record closed on February 16, 1990.

The questions presented are whether certain conduct by petitioner, would, if it had been prosecuted, constitute theft by deception in the third degree, N.J.S.A. 2C:20-4; a statutory disqualifier, N.J.S.A. 5:12-86c(1) and if so whether petitioner can establish rehabilitation and that he is a person of good character, N.J.S.A. 5:12-89b(2) and 5:12-90h.

The facts are substantially undisputed. The State Division of Unemployment and Disability Insurance has obtained a judgment against petitioner in the amount of $2,486.25, for the receipt of unemployment benefits to which he was not entitled. On January 7, 1985, petitioner's employment with Viking Yachts, Inc. ended. On January 13, 1985, he applied for unemployment benefits which were denied. Petitioner appealed, and on March 19, 1985 his disqualification was reversed and he began to receive unemployment benefits of $153 per week retroactive to his January entitlement. In early February 1985, petitioner began employment with Price Atlantic City Enterprises, Inc., which continued until April 26, 1985. While his appeal was pending, petitioner was required to report bi-weekly to unemployment to claim the weeks which were the subject of his appeal, and on each such visit he certified that he was not then employed. Petitioner did not report his employment at Price Atlantic City Enterprises and continued to claim benefits for the entire period of his employment there. Petitioner acknowledged that he intentionally withheld this information and knew it was wrong. The judgment against petitioner was entered on September 26, 1986; as of the week prior to hearing, he had paid $647.52 of the amount due.

Petitioner was arrested on May 12, 1978, by Galloway Township Police and was charged with possession of marijuana under 25 grams, N.J.S.A. 24:21-20(a)(4), comparable to N.J.S.A. 2C:35-10(a)(4) and growing marijuana in his home, N.J.S.A. 2A:170-25.1. He pled guilty to both charges and was fined $120 and ordered to pay court costs.

Petitioner was arrested on June 11, 1981 by New Jersey State Police and charged with possession of methamphetamine and marijuana under 25 grams, N.J.S.A. 24:21-20 comparable to N.J.S.A. 2C:35-10. Petitioner was indicted and found guilty of the charge of possession of methamphetamine, and he received a one-year term of probation and fine.

Petitioner was arrested on June 18, 1985, by the Egg Harbor Township Police and charged with possession of a stolen motorcycle, N.J.S.A. 2C:20-7. The charge

was administratively dismissed, and petitioner testified that he purchased the motorcycle at a flea market for $1,200 and had a receipt for it.

Petitioner was arrested on June 6, 1987, by New Jersey State Police and charged with receiving a stolen three-wheel vehicle. N.J.S.A. 2C:20-7. Petitioner was found not guilty of this offense. While he disclosed each of his prior arrests on his Personal History Disclosure Form (PHDF), petitioner failed to disclose this incident. He explained during his interview with investigators that he purchased the vehicle from a co-worker, had not known that it was stolen, and simply forgot about it when he filed his PHDF.

Petitioner is 32 years old, married, and has 4 children, ages 13, 5, 3, and 2. He is a carpenter by trade and has been so employed at the Showboat Hotel and Casino for three years. Petitioner is now a registrant and a casino employee license would permit him to work on the casino floor. He has had no disciplinary problems at work.

Petitioner also submitted four character letters from supervisors at the Showboat and from his union representative. This is the substance of the record.

Petitioner acknowledged his deception with respect to the Division of Unemployment and Disability Insurance and respondent has thus established a statutory disqualification. The rehabilitation factors tend, however, to fall in his favor. Petitioner is a person with significant family responsibilities, he has no disciplinary record with his casino employer, and his supervisors think well of him. His drug offenses occurred many years ago when he was relatively young. Thus, while petitioner's false certifications to unemployment are not easily overcome, he is repaying this debt, albeit slowly, and on balance appears to be well directed. Petitioner was a credible witness and I accept as a fact that he simply forgot to disclose the last of his four arrests.

Based on the foregoing, it is my conclusion that petitioner has established his rehabilitation and that he is a person of good character. It is **ORDERED** that petitioner be awarded a casino employee license.

This recommended decision may be adopted, 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 this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

3/13/90
Date

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

3/14/90
Date

CASINO CONTROL COMMISSION

Mailed to Parties:

March 19, 1990
Date

OFFICE OF ADMINISTRATIVE LAW

jz

EXHIBITS

On behalf of petitioner:

P-1 Letter from Joseph Flanigan, to To Whom It May Concern, dated February 8, 1990

P-2 Letter from Steven Peasse(?), to To Whom It May Concern, dated February 6, 1990

P-3 Letter from Patricia E. Keegan, to To Whom It May Concern, dated February 4, 1990

P-4 Letter from Harry Duffield, to To Whom It May Concern, dated February 8, 1990

On behalf of respondent:

R-1 Certification from Division of Unemployment and Disability Insurance, dated September 26, 1986

R-2 Determination and Demand for Refund of Unemployment or Disability Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation

R-3 Schedule of Overpayments

R-4 Wage Information Inquiry, with attachment

R-5 Claimant Ledger

R-6 Decision, In the Matter of Gary Brenner, AT-S89-2228-R(g)

R-7 Claimant Inquiry

R-8 Personal History Disclosure Form - 2A

R-9 Notice of Hearing

R-10 Memo from Gary P. Brenner, Sr., to Agent Clark, D.G.E., Re: Unemployment Checks

R-11 Record of Claim Interview and Determination

WITNESSES

Gary P. Brenner, Sr., petitioner

Donald L. Carol, State Bureau of Benefit Payment Control, Department of Labor

oat a

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-98
LICENSE NO. 44013-21
OAL DOCKET NO. CCC 652-89
ORDER NO. 90-4-10

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
JEFFREY S. BROWN

ORDER

A hearing 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 January 24, 1990,

IT IS on this 13th day of March 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 652-89
AGENCY DKT. NO. 89-EA-98

JEFFREY S. BROWN,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Don Shur, Esq., for petitioner

R. Lane Stebbins, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: October 30, 1989 Decided: December 14, 1989

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

STATEMENT OF THE CASE

This matter concerns the application of Jeffrey S. Brown (petitioner) for renewal of his casino employee license. By letter report to the Casino Control Commission dated August 18, 1988, the Division of Gaming Enforcement objected to renewal of the petitioner's license, based upon the allegation that the petitioner has been arrested on three occasions since his initial licensure. This is the issue:

> Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

The petitioner's request for a hearing on his renewal application was received by the Casino Control Commission on January 23, 1989. On January 30, 1989, the matter was transmitted by the Commission 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 on April 25, 1989.

The hearing was originally scheduled to be held on September 21, 1989. However, it was adjourned from that date at the request of the petitioner, because he sought the opportunity to obtain counsel. The matter was then rescheduled for and heard on October 30, 1989. The record closed on that date.

FINDINGS OF FACT

The material facts are essentially undisputed. The petitioner is a is 32-year-old resident of Mays Landing, New Jersey. He was issued casino employee license no. 44013-21 by the Casino Control Commission in March 1983. In July 1983, the petitioner was hired by Resorts International Hotel and Casino as a craps dealer. He held this position until he was placed on indefinite suspension status on November 18, 1986 (Exhibit R-6), as a result of his arrest on November 13, 1986.

The petitioner was first arrested on August 15, 1986, following a motor vehicle stop by the New Jersey State Police on the Atlantic City Expressway. The petitioner was found to have methamphetamine and marijuana in his possession. He was indicted for possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20a(1), on November 20, 1986 (Exhibit R-1).

Just prior to issuance of this indictment, the petitioner was arrested on November 13, 1986 (Exhibit R-7) and charged with several drug and weapons offenses. The petitioner was interviewed by the Resorts International Inspector General's Office on November 18, 1986, and was suspended by the assistant casino manager pending court disposition of the charges (Exhibit R-6). On December 2, 1986, the petitioner was indicted for possession of a controlled dangerous substance and possession with intent to distribute, possession of handgun without a permit, unlawful acquisition of a firearm, and possession of a weapon (Exhibit R-3).

The petitioner's arrest occurred at about 6:00 on the morning of November 13, 1986. According to the Atlantic City Police Department Investigation Report (Exhibit R-7), the police were called to the arrest scene in response to a citizen's complaint that two disorderly males were in a vehicle continuously blowing the car horn. When the police arrived, they found one Paul Alston in the passenger seat of the vehicle. An open can of beer was on the floor of the passenger side of the vehicle, together with hand-rolled cigarettes and a rolled plastic baggy containing a white powder. Mr. Alston was placed under arrest. A further check of the vehicle revealed a .38 caliber Derringer two shot pistol, which was not loaded.

The police were admitted to the nearby apartment complex and they there located and arrested the petitioner. When he was searched, it was discovered that he had a large folding knife in his possession, as well as two plastic baggies of marijuana and a container of Valium tablets. The petitioner told the arresting officers that he had purchased the weapon for $20.00 from a man who lost a lot of money gambling.

Testifying on his own behalf, the petitioner stated that he had purchased the gun in a tavern around 4:00 that morning from a man he had never seen before. According to the petitioner, the man said that he had lost his money gambling and he was also selling his jewelry. The petitioner testified that the man offered to sell him a gold chain, but it was purchased by someone else. It was the sincere and believable testimony of the petitioner that he did not tell the police officers or the Resorts International investigator that the seller of the gun had been a Resorts patron. He never saw the seller before meeting him in the tavern and he also testified believably that the statement in the Resorts interview report that he had purchased a gold chain was not correct.

While the two indictments against the petitioner were pending, he was arrested for a third time. On January 31, 1987, the petitioner was arrested in Hamilton Township, Atlantic County, and charged with possession of marijuana less than 25 grams, in violation of N.J.S.A. 24:21-20a4 (Exhibit R-5). On February 5, 1987, the petitioner entered a plea of guilty in Municipal Court and received a conditional discharge. A term of the conditional discharge was a period of unsupervised probation for six months.

On January 12, 1987, the petitioner had entered a plea of not guilty to the pending indictments. However, he retracted the plea of not guilty on March 5, 1987

and entered a plea of guilty to the one count indictment charging him with possession of a controlled dangerous substance (methamphetamine). He also entered a guilty plea to counts two and four of the seven count indictment (Exhibit R-3) charging him with various weapons and drug offenses. Specifically, the petitioner pled guilty to possession of a handgun without a permit, contrary to N.J.S.A. 2C:39-5(b) and possession of a controlled dangerous substance (marijuana over 25 grams), contrary to N.J.S.A. 24:21-20a(4). The remaining counts were dismissed.

On March 27, 1987, the petitioner was sentenced to the Atlantic County Jail for 90 days and probation for one year on the single count indictment for unlawful possession of methamphetamine (Exhibit R-2). He was also ordered to pay $30.00 to the Violent Crimes Compensation Board and to have quarterly drug reports. On count two of the second indictment, possession of a handgun without a permit, the petitioner was also sentenced to the Atlantic County Jail for 90 days and probation for one year. This sentence was to run concurrently with the sentence on the earlier indictment. On count four of the second indictment, possession of marijuana over 25 grams, the petitioner received the same sentence as he received for count two, and this sentence was also to run concurrently. A sentencing requirement for each count was that the petitioner seek and maintain employment (Exhibit R-4).

In July 1987, the petitioner was hired as a craps dealer by the Claridge Casino. He has continued to work there ever since. According to the petitioner, he has not received any disciplinary action from his supervisors at the Claridge. The petitioner also testified that he has had no arrests since January 1987, and he had no problems with the law prior to his first arrest in August 1986.

The petitioner candidly admitted that he had possessed narcotics and had purchased a weapon from an unknown party in a tavern. He had not been working at the casino that night and he was sober when he made the purchase. According to the petitioner, he put the weapon under the passenger seat of the vehicle which he was driving. It was not loaded. It was his intention to take the weapon home and register it legally if he could. He characterized the purchase of the weapon as a "stupid move." The petitioner cooperated with the police and ultimately served his jail time and complied with the terms of probation.

When asked to explain how it was that he became involved in illegal activity, the petitioner stated that he had just been divorced at the time of his arrests and he

was having visitation problems in regard to his two daughters. In addition, his parents also were involved in divorce proceedings at that time.

The petitioner testified believably that the serious problems involving his family had an adverse affect on him. However, he emphasized that he never sold narcotics. He now believes that he has changed completely. He is happily remarried and has no interest in drugs. According to the petitioner, he is happy with his life as a father and a husband and he would like to continue working in the casino industry.

Robert Ruberton also testified at the hearing. He is the petitioner's cousin and has been his friend for 30 years. Mr. Ruberton supervises a computer system for First Fidelity Bank. It is his opinion that the petitioner is an honest and trustworthy man of conscious. He noted that the petitioner has bounced back from the stress of his earlier family problems.

John Mavromatis also testified on behalf of the petitioner. He stated that he knows the petitioner to be a good person deep down. He described the petitioner's honesty as "impeccable." According to Mr. Mavromatis, he would trust the petitioner with his son's life.

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. It is the intention of the act to preclude the creation of any property right in any license permitted under the act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. 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 good character, honesty and integrity.

The Division of Gaming Enforcement contends that the petitioner has failed to meet his burden of establishing his good character, honesty and integrity.

Specifically, the Division notes that the petitioner had three arrests while he held a casino employee license and worked in the industry.

The petitioner acknowledges his three arrests, the first of which occurred on August 15, 1986, and the last of which occurred on January 31, 1987. He candidly admits that these arrests resulted from stupid conduct on his part. The ill-advised conduct occurred while he was experiencing a great deal of family-related stress. In essence, the petitioner contends that he is an honest man who briefly engaged in aberrant behavior three years ago.

I agree with the petitioner. It is particularly significant that he has worked satisfactorily and without incident as a craps dealer at the Claridge Casino since July 1987. There is no doubt that the petitioner's conduct several years ago impacts negatively on his qualifications for licensure. The Division's objection to his renewal application amply illustrates the negative impact. Nevertheless, I am convinced that the petitioner has overcome his earlier difficulties and that he has established by clear and convincing evidence that he presently possesses the good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the act. I so **CONCLUDE**.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Jeffrey S. Brown for renewal of licensure as a casino employee permitting him to work in a licensed casino as a craps dealer be **GRANTED**.

This recommended decision may be adopted, 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 this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

December 14, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

Date

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 19 1989
Date

OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

None

For the respondent:

R.-1 Indictment no. 86-11-2348-C, dated November 20, 1986

R-2 Judgment of Conviction, dated March 27, 1987

R-3 Indictment no. 86-12-2406-C, dated December 2, 1986

R-4 Judgment of Conviction, dated March 27, 1987

R-5 Complaint dated January 31, 1987, and Disposition dated February 5, 1987

R-6 Resorts International Employee Warning Notice, with attached memo and newspaper article

R-7 Atlantic City Police Department Investigation Report, dated November 13, 1986

WITNESSES

For the petitioner:

Jeffrey S. Brown
Robert Ruberton
John Mavromatis

For the respondent:

Jeffrey S.Brown

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-295
APPLICATION NO. 074150-22
(REGISTRATION NO. 090001-40)
OAL DOCKET NO. CCC 03156-89
ORDER NO. 90-10-6

APPLICATION OF EVELYN K. CAHALL
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 March 7, 1990,

IT IS on this 13th day of March 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3156-89
AGENCY DKT. NO. 89-EA-295

EVELYN K. CAHALL,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Evelyn K. Cahall, petitioner, pro se

Ralph Fusco, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: January 9, 1990 Decided: January 24, 1990

BEFORE JEFF S. MASIN, ALJ:

Evelyn K. Cahall, holder of a casino hotel registration, seeks a casino employee license. By letter of April 24, 1989, the Division of Gaming Enforcement ("Division") filed a letter of objection with the Casino Control Commission ("Commission") objecting to the issuance of the license. Ms. Cahall requested a hearing and the matter was transferred to the Office of Administrative Law on April 28, 1989, as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held before Honorable Lillard E. Law, ALJ, on September 5, 1989. Judge Law issued a prehearing order on September 19, 1989. The case came on for hearing before Administrative Law Judge Jeff S. Masin at the

Office of Administrative Law in Atlantic City on January 9, 1990. The record closed following the hearing.

ISSUES

The prehearing order established the issues for consideration at the hearing as:

A. Whether petitioner was convicted in a foreign state of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: Promoting gambling, analogous to N.J.S.A. 2C:37-2 or; providing a premises for gambling, analogous to N.J.S.A. 2C:37-4?

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2)?

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act?

EVIDENCE

Ms. Cahall does not dispute that she was convicted in the State of Delaware in 1981 upon her plea of guilty to a charge that she had committed the offense of advancing gambling in the second degree, 11 Del. Code Annotated 1401. This offense makes it a class A misdemeanor for a person to advance gambling by:

. . .

(3) . . . is concerned in interest in lottery policy writing, or in selling or disposing of any lottery policy, . . .

In addition, Ms. Cahall does not dispute that she was also convicted of providing premises for gambling, an offense involving the knowing permission of the use of a house by one in possession or control for the purpose of committing any gambling offense. As a result of her conviction on these offenses, Ms. Cahall, then known as Evelyn K. Papaleo, was sentenced to two years unsupervised probation beginning June 10, 1981, on her plea to Indictment I-N-80-06-0889 and, on her plea to I-N-80-05-1173 to a term of imprisonment of 30 days, which was suspended, and one year probation beginning at the termination of the two-year probationary period set for the plea on the other indictment. This probation was also unsupervised.

Ms. Cahall remained on probation until an order discharging her from the unsupervised probation was signed on August 20, 1987. She explained that because

she had no money to pay the $1,600 fine that was also imposed upon her on her plea to the offenses she remained on probation until the full amount of the fine was paid.

According to the petitioner, she moved to Mays Landing approximately seven years ago. Although she is now unemployed, she previously was employed until December 1, 1989, at Paoli's Tavern in Cologne where she worked as a bartender and waitress for about ten and one-half months. Prior to that she worked for two months at TropWorld as a cocktail server and before that at the Diamond Lounge in Mays Landing for four and one-half years.

Ms. Cahall explained that at the time of her arrest in 1980 she was writing numbers for a lottery which was being conducted in the State of Delaware. Her then husband, who was a nightclub owner and gambler, had asked her to become involved to help out a "friend." She worked in this operation from approximately September or October 1979 until her arrest in March or April 1980. She would take phone calls from bookies who would be laying off bets with the person for whom she worked - a Mr. Cappadono (phonetic). The bets might total $100 or $150 a day, sometimes more. She would be paid approximately $125 a week for her work, although this figure varied depending on the number of days she worked. She wrote down the bets which were called into her on regular paper and did not use flash paper. She would receive a phone call from someone who would then take the numbers which had been called in by the various bookies from her. The sheets upon which she recorded the bets were never picked up and she would retain them for a short time and then dispose of them. She was arrested following a wire tap on her home. At the time the police came to her house to search it, she was in Las Vegas and her 18-year-old son was the only one present. Her husband was charged with providing a house for gambling, but this charge was dropped. He refused to help her pay her fine and she received no assistance in this from the bookie for whom she was working. This left her to pay the debt herself.

Ms. Cahall is 50 years old and has no dependents. She is currently unmarried. She has never been convicted of any other offense.

The petitioner brought no character witnesses with her nor did she present any character references. When queried concerning this, she explained that while she

could have obtained many such references, she felt that she could speak for herself and did not think the character witnesses or references would really be helpful.

The petitioner lives in Mays Landing where she owns her home. She explained that she has not been involved in community activities and that most of her free time is spent working on the house, which she described as a hobby of sorts.

The state presented no other evidence other than Ms. Cahall's testimony, the record of the conviction and the Personal History Disclosure Form.

THE FACTS

The facts in this case are quite simple. In 1979 and 1980, Ms. Cahall became involved in a gambling operation, taking telephone calls during which bookies laid off bets with her employer. It is unclear exactly how large of an operation was involved, although she acknowledged that the dollar amount of bets over the course of a week would likely be in excess of $500.

Since her arrest, Ms. Cahall has successfully completed her unsupervised probation which was extended only because of her financial situation. She has moved to New Jersey, been employed fairly steadily, purchased property with her new husband (from whom she is now divorced), and kept out of trouble.

Initially, it is clear that Ms. Cahall's conduct in Delaware in 1979-80 constituted a violation of the offenses to which she pled guilty and that these offenses are essentially analogous to New Jersey statutes prohibiting the promotion of gambling and maintenance or provision of a premises for gambling. Promoting gambling under N.J.S.A. 2C:37-2 is defined as, among other conduct, engaging in "conduct, which materially aids any form of gambling activity. Such conduct includes, but is not limited to, conduct directed toward . . . the actual conduct of the playing phases, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation." Pursuant to the statute, a person engaging in bookmaking to the extent of accepting bets in a lottery or policy scheme involving more than $100 in any one day of money played is guilty of a crime in the third degree.

Maintenance of a gambling resort is defined by N.J.S.A. 2C:37-4 as including allowing premises over which one has substantial proprietary or other authoritative

control to be used for purposes of gambling activity. Here, Ms. Cahall not only permitted her house to be used for receipt of numbers bets, but was paid for her participation in the enterprise.

In view of the convictions, I **CONCLUDE** that Ms. Cahall's conduct constitutes a disqualifying offense pursuant to N.J.S.A. 5:12-86c1 and she is therefore disqualified from licensure as a casino employee, unless she can establish rehabilitation in accordance with the provisions of N.J.S.A. 5:12-90h.

Ms. Cahall's testimony concerning her life since her arrest and conviction in 1980-81 shows that she has led a rather unremarkable existence since that time. She has moved to New Jersey, been married and subsequently divorced, has worked both in private capacities as well as for a short stint in a casino hotel, has bought and worked on maintaining and improving property. There is absolutely nothing about her conduct since 1981 to indicate that she has acted in violation of law or has done anything to create any mark against her. At the same time, it is fair to say that there is nothing about her existence which indicates that she has gone out of her way to participate in community affairs or to in any way do anything especially affirmative to counterbalance the apparently aberrational conduct in which she engaged in 1979 and 1980.

With respect to that conduct, it appears that Ms. Cahall may have acted under the influence of her then husband, an individual who she describes as having been a gambler. Given the fact that she was never in trouble before or since, it is fair to characterize the actions in which she engaged as aberrational. In addition, her role in the operation appears to have been minimal in that there is no evidence that she was involved in the creation of the scheme or the financing of it, but was merely a information taker playing a vital, but not especially creative, role in the enterprise.

The only real flaw in Ms. Cahall's presentation which may give some pause as to whether she has demonstrated by clear and convincing evidence that she now has the requisite good character, honesty and integrity required for licensure and that she has rehabilitated herself from the negative effects of this nearly 10-year-old criminal episode is her failure to produce character witnesses on her behalf. The subject of character evidence is, of course, a difficult one. In and of themselves, character references, be they in the form of live testimony or written statements, are often of little significance in a determination as to whether an individual is really an appropriate candidate for licensure. Often individuals who speak to the good

character of a person know that person only in a specific context which may not be one which really reveals the true characteristics of the individual. On the other hand, there is no question but that some character references are of extreme significance and are in and of themselves quite persuasive as to the character of the person testified about. Here, the absence of any character support does have a negative impact on the full picture of rehabilitation and good character which Ms. Cahall seeks to present. At the same time, I believe it is fair to say that an individual who has for nearly ten years been in no trouble with the police and who has maintained herself in employment, homeownership, etc., for that period of time may well feel that they must stand or fall on their own and that placing requests with individuals to write or come to court to testify on their behalf is both an imposition and in some degree a slight on their own ability to stand up, speak for and represent themselves. Since Ms. Cahall was not represented in this case I do not know what advice she may have sought or received as to the possible significance of character evidence, although there is a strong likelihood that at the prehearing conference, which was conducted before another judge, she may have been advised that she could produce such evidence if she chose. Her own testimony on the subject seems to indicate that she did not feel it necessary.

Taking into account the limitations imposed by the failure of the petitioner to produce character evidence, I am nevertheless persuaded that the 1979-80 conduct should not stand in the way of her licensure as a casino employee with a position designation as a alcoholic beverage employee. There is no evidence whatsoever that Ms. Cahall has ever been anything other than a respectable citizen, except for a short period of time ten years ago. The nature of the offense which she engaged in was quite limited. Her own testimony as to her recent and current activities was in and of itself sufficient to impress this judge as to her sincerity, honesty and basic integrity. Under these circumstances, I **CONCLUDE** that she has established by clear and convincing evidence both that she has rehabilitated herself from her unfortunate aberrational conduct and that she has the requisite good character, honesty and integrity for licensure. Therefore, it is **ORDERED** that Ms. Cahall be granted a casino employee license.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 24, 1990
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

1/25/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 29 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

ml

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DOCUMENTS IN EVIDENCE

For petitioner:

None

For respondent:

R-1 Sentence order in the matter of State of Delaware v. Evelyn K. Papaleo

R-2 Personal History Disclosure Form

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-417
REGISTRATION NO. 088585-40
OAL DOCKET NO. CCC 4662-89
ORDER NO. 90-12-8

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

Complainant,

v.

GABRIEL CARRERO,
a/k/a JOSE GABRIEL CARRERO,

Respondent.

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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 21, 1990,

IT IS on this 27th day of April 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the respondent 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /CJD
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4662-89
AGENCY DKT. NO. 89-417

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
GABRIEL CARRERO a/k/a JOSE GABRIEL CARRERO,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Gabriel Carrero, the respondent, pro se

Record Closed: January 23, 1990 Decided: February 1, 1990

BEFORE **STEVEN L. CARNES,** ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Gabriel Carrero's casino hotel employee registration no. 88585-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1), and therefore, he is disqualified from registration, pursuant to section 91b. The respondent contended that he was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so he could be employed as a busboy, and now host, at TropWorld Casino and Entertainment Resort. By complaint to the Commission, filed June 5, 1989, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of possession of a controlled dangerous substance (cocaine) with the intent to distribute, in violation of N.J.S.A. 24:21-19, which is the predecessor statute to N.J.S.A. 2C:35-5, which is a disqualifying offense under section 86c(1). Based upon the complaint, the Commission notified the respondent on June 7, 1989, that he had the right to a hearing, and that failure to respond within 15 days could result in his registration being revoked. By application dated June 14, 1989, which was received by the Commission on June 16, 1989, the respondent requested a hearing. On June 19, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on June 26, 1989, 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 in the matter was held before Administrative Law Judge Lillard E. Law on September 28, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, to wit: N.J.S.A. 24:21-19, possession of a controlled dangerous substance with the intent to distribute which is analogous to N.J.S.A. 2C:35-5.

B. Whether respondent may demonstrate rehabilitation pursuant to Section 91d of the Casino Control Act.

A hearing was held on January 23, 1990, in the Pleasantville Police Building, Pleasantville, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On March 2, 1985, the respondent along with a friend traveled from New York to visit a friend named Arturo in Galloway Township, New Jersey. The respondent was involved in using the controlled dangerous substance cocaine at Arturo's apartment, and he had known that the cocaine would be there. While the respondent was at the apartment, the police arrived, entered the apartment, located and seized the cocaine, and arrested the respondent.

On March 14, 1985, the respondent was indicted in the Superior Court of New Jersey, Law Division (Criminal) by the Atlantic County Grand Jury in Indictment No. 85-03-0441-Inv (C). In this indictment the respondent was charged with two counts of possession of a controlled dangerous substance (cocaine) in violation of N.J.S.A. 24:21-20a and two counts of possession of a controlled dangerous substance (cocaine) with the intent to distribute in violation of N.J.S.A. 24:21-19. The difference between counts one and two and counts three and four is the alleged amount possessed. [P-3]

On April 29, 1985, the respondent entered a plea of guilty to one count of possession of a controlled dangerous substance (cocaine) with the intent to distribute in a quantity of one ounce or more that included in excess of 3.5 grams of the pure free base, in violation of N.J.S.A. 24:21-19a(1) and N.J.S.A. 24:21-19b(2). The remaining counts of the indictment were dismissed. On May 24, 1985, the respondent was sentenced to be incarcerated for six years (with nine days credit for time served), was ordered to pay a $25 Violent Crimes Compensation Board penalty, and was ordered to forfeit $3,020 which had been seized in the apartment. In giving his reasons for imposing a custodial sentence, the judge cited four aggravating factors and two mitigating factors. The aggravating factors cited by the judge were the risk that the respondent would commit another crime, the substantial likelihood that the respondent was involved in organized criminal activity, the respondent's prior record and the seriousness of the crime, and the need for deterring the respondent and others from violating the law. In addition, the judge wrote that "in view of the quantity and quality of the drugs involved in this matter and defendant's background generally, this sentence to State Prison is appropriate and required. . . ." [P-4] The respondent was incarcerated from May 1985 until January 1987. He was then placed on parole supervision. In December 1988, he was released from parole supervision early for good behavior.

The respondent was born on March 18, 1952, in the Dominican Republic. His family emigrated to Puerto Rico where he was raised. He was raised by his parents with seven brothers and one sister. He completed the eleventh grade in school and played scholastic baseball. The respondent began a GED program while incarcerated, but he was released before he could complete it. In 1978, the respondent moved to New York City. From 1979 through 1981, the respondent was employed by Albin Pleiries, a sheet metal company, from 1982 until his incarceration in 1985 by Roman Flosing, and from his release from incarceration until August 1988 by Oriental Movers on a moving company truck.

In August 1988, the respondent completed a Personal History Disclosure Form 4A (P-1), which was filed with the Commission in September 1988. On this form, the respondent indicated his conviction and his employment record. On August 25, 1988, the respondent completed a TropWorld Employment Application (P-2). On this form, the respondent checked that he had not been convicted of a crime, did not disclose date, location, nature of crime or disposition as requested, and indicated that he had been employed by Albin Pleiries from 1982 through 1987. In addition, the respondent indicated that he had completed the twelfth grade.

The respondent was hired by TropWorld, and he began his employment in September 1988 as a busboy. Approximately nine months ago, the respondent was promoted from being a busboy to being the host in a buffet style restaurant.

In addition to presenting one witness who spoke in his behalf, the respondent presented two letters of recommendation. In a letter dated September 26, 1989, John Ofeldt, manager of A.C. Station Buffet, TropWorld Casino and Entertainment Resort wrote that he has

> known Gabriel Carrero for two years now, both as an employee and friend. He has a very good work record. Gabriel started working as an [sic] Food Server Attendant and was promoted to a greeter. His attendance is excellent. He is an asset to our staff. [R-1]

The second is written by the respondent's parole officer, Rodney Pryor. Mr. Pryor stated that at the time the letter was written, September 12, 1988, the respondent was in good standing and that Mr. Pryor supported him. Mr. Pryor indicated that he would appreciate any assistance rendered which might help the respondent become gainfully employed. [R-2]

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully in this matter. He candidly admitted his misconduct and described the underlying circumstances. The respondent's answers on his employment application, however, cause me to be somewhat skeptical of his veracity. Accordingly, I am persuaded to accept the respondent's testimony in substantial part.

FINDINGS OF FACT

1. On March 2, 1985, the respondent along with a friend traveled from New York to visit a friend named Arturo in Galloway Township, New Jersey. The respondent was involved in using the controlled dangerous substance cocaine at Arturo's apartment, and he had known that the cocaine would be there.

2. On March 14, 1985, the respondent was indicted in the Superior Court of New Jersey, Law Division (Criminal) by the Altantic County Grand Jury in Indictment No. 85-03-0441-Inv (C). In this indictment the respondent was charged with two counts of possession of a controlled dangerous substance (cocaine) in violation of N.J.S.A. 24:21-20a and two counts of possession of a controlled dangerous substance (cocaine) with the intent to distribute in violation of N.J.S.A. 24:21-19.

3. On April 29, 1985, the respondent entered a plea of guilty to one count of possession of a controlled dangerous substance (cocaine) with the intent to distribute in a quantity of one ounce or more that included in excess of 3.5 grams of the pure free base, in violation of N.J.S.A. 24:21-19a(1) and N.J.S.A. 24:21-19b(2). The remaining counts of the indictment were dismissed.

4. On May 24, 1985, the respondent was sentenced to be incarcerated for six years (with nine days credit for time served), was ordered to pay a $25 Violent Crimes Compensation Board penalty, and was ordered to forfeit $3,020 which had been seized in the apartment.

5. The respondent was incarcerated from May 1985 until January 1987. He was then placed on parole supervision. In December 1988, he was released from parole supervision early for good behavior.

6. The respondent was born on March 18, 1952, in the Dominican Republic. His family emigrated to Puerto Rico where he was raised. He was raised by his parents with seven brothers and one sister. He completed the eleventh grade in school and played scholastic baseball. The respondent began a GED program while incarcerated, but he was released before he could complete it.

7. In 1978, the respondent moved to New York City. From 1979 through 1981, the respondent was employed by Albin Pleiries, a sheet metal company, from 1982 until his incarceration in 1985 by Roman Flosing, and from his release from incarceration until August 1988 by Oriental Movers on a moving company truck.

8. On August 25, 1988, the respondent completed a TropWorld Employment Application. On this form, the respondent checked that he had not been convicted of a crime, did not disclose date, location, nature of crime or disposition as requested, and indicated that he had been employed by Albin Pleiries from 1982 through 1987. In addition, the respondent indicated that he had completed the twelfth grade.

9. The respondent was hired by TropWorld, and he began his employment in September 1988 as a busboy. Approximately nine months ago, the respondent was promoted from being a busboy to being the host in a buffet style restaurant.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:

a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

b. 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;

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

1. Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . . .

N.J.S.A. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance or a controlled dangerous substance analog which constitutes a crime of the second or third degree);

. . . .

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. 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 of P.L.1977, c. 110 (C. 5:12-86).

. . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, 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 or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

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

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

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

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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . .registrant." N.J.S.A. 5:12-129(1) provides for the revocation of 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 . . . registration." The Division contends, that the respondent was convicted of a violation of N.J.S.A. 24:21-19a(1) and b(2) which is the predecessor

statute of N.J.S.A. 2C:35-5, possession of a controlled dangerous substance with the intent to distribute, which constitutes a violation of N.J.S.A. 5:12-86c(1), and that, accordingly, he is disqualified from continued registration.

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's possession of a controlled dangerous substance (cocaine) with the intent to distribute in violation of N.J.S.A. 24:21-19a constitutes a violation of N.J.S.A. 2C:35-5, which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 24:21-19, Prohibited acts A. - Manufacturing, distributing, or dispensing - Penalties, provides in pertinent part:

> a. Except as authorized by this act, it shall be unlawful for any person knowingly or intentionally:
>
> (1) To manufacture, distribute, or dispense, or to possess or have under his control with intent to manufacture, distribute, or dispense, a controlled dangerous substance; or
>
> . . .
>
> b. Any person who violates subsection a. with respect to:
>
> (2) A substance, in a quantity of one ounce or more including any adulterants or dilutants, classified in Schedules I or II which is a narcotic drug, provided that there are included at least 3.5 grams of the pure free base Schedule I or II narcotic drug, is guilty of a high misdemeanor and shall be punished by imprisonment for up to life, a fine of not more than $25,000.00, or both; . . . .

N.J.S.A. 2C:35-5, Manufacturing, distributing or dispensing, provides in pertinent part:

> a. Except as authorized by P.L. 1970 c.226 (C. 24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:
>
> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled

> dangerous substance or controlled substance analog; or
>
> . . .
>
> b. Any person who violates subsection a. with respect to:
>
> (1) Heroin, or its analog, or coca leaves and any salt, compound, derivative, or preparation . . . thereof which is chemically equivalent or identical with any of these substances, or analogs, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecogine, in a quantity of five ounces or more including any adulterants or dilutants, is guilty of a crime of the first degree. The defendant shall, except as provided in N.J.S. 2C:35-12, be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S. 2C:43-3, a fine of up to $300,000.00 may be imposed;
>
> (2) A substance referred to in paragraph (1) of this subsection, in a quantity of one-half ounce or more but less than five ounces, including any adulterants or dilutants is guilty of a crime of the second degree . . . .

The Division established, and the respondent admitted during his testimony, that he knowingly possessed cocaine. The Division further established that the respondent was convicted in Superior Court of possession of a at least one ounce of a controlled dangerous substance (cocaine) with the intent to distribute. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:35-5a(1) and that the respondent was convicted of a violation of N.J.S.A. 24:21-19a which is the predecessor statute of N.J.S.A. 2C:35-5a. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-5b(2), the offense constitutes a crime of the second degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-91d

A 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. 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 registrant's position;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the registrant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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.

In regard to the first criterion, Gabriel Carrero is a casino hotel registrant and is employed as a restaurant host. As such, he does not have direct responsibilities for actual gaming activities but does come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:35-5, possession of a controlled dangerous substance (cocaine) with the intent to distribute in 1985, prior to his employment in the casino industry. Because the offense is a listed disqualifier under section 86c(1) and because it is a drug offense, it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent was involved in using cocaine at a friend's apartment, and he had known that the drugs would be there. The sentencing judge's statement of reasons for sentencing indicates that this was a serious offense involving a substantial

quantity of high quality drugs and that the potential sale of these drugs may have been an organized activity. Such an offense is extremely serious and cannot be tolerated in a highly regulated industry such as the casino industry.

Fourth, the respondent's misconduct occurred in 1985, when it ceased.

Fifth, the respondent was nearly 33 years old at the time of the offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was isolated in nature. He has not been convicted of any other violations of the criminal laws. He had one prior arrest from 1978. He was arrested along with other patrons of a bar where a revolver was discovered during a disturbance. The respondent was never charged with any criminal violation arising from this arrest.

Seventh, the respondent was living in an area where drugs were available and was associating with people who regularly used drugs in their culture.

Eighth, the respondent has made some rehabilitative efforts. He completed a drug rehabilitation program, was incarcerated for 18 months, and was released from parole early for good behavior. He helps support a son who lives with the child's mother in New York. The respondent is remorseful and regrets his misconduct. He is a hard worker who has performed admirably in the casino industry in the last year and one-half, and has advanced from a bus person to a restaurant host. Several answers on his employment application (P-2), however, appear to be untrue and must be weighed against any finding of rehabilitation.

The Commission has recently addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior

> Commission cases[1] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In order to overcome the prohibition against continued registration, a registrant has the burden of affirmatively establishing his rehabilitation by clear and convincing evidence. The Commission explained the differences in the evidentiary standards in In re Boardwalk Regency Casino Application, 10 N.J.A.R. 295 (1980). At pages 297 and 298 of that decision the Commission stated:

> Sections 84 and 89(b) of the Act set forth the criteria which a casino license applicant and other persons required to be qualified as a condition of such licensure must affirmatively establish by clear and convincing evidence. N.J.S.A. 5:12-84 and 89(b). The clear and convincing evidence requirement falls between the ordinary civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt." The preponderance standard means simply that when the record is considered as a whole the credible evidence renders the existence of the fact in question more likely than not. In contrast, the familiar criminal standard means that the trier of fact must not have a reasonable doubt, that is, one based on the evidence or the lack of evidence. A reasonable doubt is one which has some justification rather than an imaginary or possible doubt. The clear and convincing standard is much higher than the preponderance standard but somewhat less than the reasonable doubt requirement. Clear and convincing evidence should produce in the mind of the Commissioner a firm belief or conviction as to the truth of the matters sought to be established. In order to sustain its burden, the applicant was obliged to present clear and convincing proof of the facts upon which the Commission may reach a reasonable conclusion as to suitability. [emphasis added]

In this case, the respondent is a restaurant host. He has no responsibility for any casino gaming activity, but does have contact with casino patrons. Considering the nature of the position he holds, the respondent's work record in the industry, his demeanor and candor at the hearing, the discrepancies in his employment application, the fact that he was convicted of possession of cocaine with the intent to distribute, and the seriousness of the offense, when weighed against the eight rehabilitative criteria:

---

1 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. NO. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. NO. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** and that registration no. 88585-40 be revoked.

This recommended decision may be adopted, 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, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

2/5/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 6 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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259

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Personal History Disclosure Form 4A, dated September 22, 1988

P-2 Trop World Employment Application, dated August 25, 1988

P-3 Superior Court of New Jersey Indictment No. 83-03-0441-INV (C)

P-4 Superior Court of New Jersey Judgment of Conviction, dated May 24, 1985

For the Respondent:

R-1 Letter of John Ofeldt, manager of A.C. Station Buffet, Trop World, dated September 26, 1989

R-2 Letter of Rodney Pryor, parole officer, State of New York, dated September 12, 1988

WITNESSES

For the Petitioner:

Gabriel Carrero, the respondent

For the Respondent:

Gabriel Carrero, the respondent
Agustin Gomez

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-41
LICENSE NO. 66609-21
OAL DOCKET NOS. CCC 6657-88
AND CCC 7693-89
ORDER NO. 90-20-5

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

Complainant,

v. ORDER

RICHARD T. CONTE,

Respondent.

This matter having been transmitted to the Office of Administrative Law for a hearing; and the respondent having failed to appear at scheduled proceedings; 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 May 16, 1990,

IT IS on this 21st day of May 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked based upon his constructive admission pursuant to N.J.S.A. 5:12-108(d) of the matters and facts contained in the complaint, which is incorporated herein by reference, and his failure to respond to the issues raised in the Commission's order of remand dated September 27, 1989; and

IT IS FURTHER ORDERED that Richard T. Conte 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6657-88
AGENCY DKT. NO. 89-41

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFOCEMENT,
Petitioner,
v.
RICHARD T. CONTE,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Richard T. Conte, respondent, pro se

Record Closed: June 12, 1989 Decided: June 28, 1989

BEFORE **STEPHEN W. THOMPSON**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent's casino licensure would be inimical to the policy of the Casino Control Act pursuant to section 86c(2) by virtue of his alleged use and possession of a controlled dangerous substance in violation of N.J.S.A. 2C:35-10 on May 10, 1988, pursuant to N.J.S.A. 5:12-86g. The Division also alleges that respondent lacks the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to section 89b(2), as incorporated within section 90b.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on August 1, 1988. The respondent requested a hearing on August 15, 1988. On September 7, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) 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 March 2, 1989, and the matter was scheduled for hearing on June 12, 1989 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The matter was heard and the record closed on June 12, 1989.

ISSUES

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act within the meaning of Section 86c(2) because he is alleged to have committed a violation of N.J.S.A. 2C:35-10, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

B. Whether respondent possesses the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act?

FINDINGS OF FACT

The respondent, Richard Conte, was a part-time blackjack dealer within the Atlantis Hotel and Casino until his termination on May 14, 1988.

On the evening of May 10, 1988, the respondent was arrested and charged with possession and use of a controlled dangerous substance in violaton of N.J.S.A. 2C:35-10. The respondent, while at the Atalntis Hotel and Casino, was allegedly observed using marijuana in the men's locker room.

On August 30, 1988, the charge against the respondent was dismissed in the Atlantic City Municipal Court on motion of the prosecutor.

Detective Derrick Jones of the New Jersey State Police testified that he had no direct knowledge of the respondent's use or possession of a controlled dangerous substance. Respondent acknowledges, however, that he was found guilty of possession of controlled dangerous substance in the Ventnor Municipal Court on May 18, 1988. Respondent also acknowledges a shoplifting conviction on July 30, 1987, in Egg Harbor Township.

The above is uncontroverted, believable and is thus **FOUND AS FACT.**

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(2)

Section 86(c) 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, Casno Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimcal 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 presenst 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 particpation 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 danger of unsuitable, unfair or illeal practices, method and activities in the conduct of gaming or the carrying on of the business of financial arrangements incidental to gaming operations.

However, in this matter, the Division's proofs are fatally flawed. The observable testimony of Detective Jones and the documentary evidence fail to establish a linkage between the charged act and the alleged behavior of Mr. Conte. Innuendo and probabilities which the Division asks to be noted are not proof that a violation has occurred.

Therefore, I **CONCLUDE** that the Division has failed to establish a violation of N.J.S.A. 2c:35-10 by a preponderance of the credible evidence. I further

CONCLUDE that Mr. Conte's continued licensure is not inimical to the policy of the Casino Control Act.

(B) N.J.S.A. 5:12-89b(2), as incorporated within Section 90b

Under section 89b(2) of the Act, as incorporated in section 90b, the petitioner is required to demonstrate good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (Feb. 26, 1970) 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 criteria 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 repuation 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 the petitioner 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 (Nov. 13, 1980) at 5. In accordance with the regulatory strictnes intended by the Legislature, it is imperative that the character and background of the petitioner be scrutinized closely. Boardwalk Regency Corp. at 2.

I have had the opportunity to observe Mr. Conte's demeanor and credibility. Respondent has totally failed to sustain his burden of proof by establishing his good character, honesty and integrity by clear and convincing evidence. The record is devoid of any charcter references. Furthermore, the respondent's testimony was evasive and misleading.

Based on the totality of the circumstances, including respondent's convictions for shoplifting and possession of a controlled dangerous substance. I **CONCLUDE** that petitioner has failed to demonstrate the requisite good character, honesty and integrity for casino licensure pursuant to section 89b(2), as incorporated within section 90b.

ORDER OF DISPOSITION

Therefore, It is **ORDERED** that the license of Richard T. Conte be **REVOKED.**

This recommended decision may be adopted, 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.

6-28-89
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

6/29/89
DATE

Lorraine Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 3 1989
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For the petitioner:

P-1 Statement of Jimmy Figeroa
P-2 Statement of Richard Conte
P-3 State Police Request for Examination of Evidence
P-4 Laboratory Report

For the respondent:

None

WITNESS LIST

For the petitioner:

Detective Derrick Jones, New Jersey State Police
Richard T. Conte

For the respondent:

Richard T. Conte

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-385
LICENSE NO. 061466-21
REGISTRATION NO. 059219-40
OAL DOCKET NO. CCC 4784-89
ORDER NO. 90-18-13

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

Complainant,

v.

RALPH D'AMBROSIO,

Respondent.

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 May 2, 1990,

IT IS on this 10th day of May 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Ralph D'Ambrosio 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly DJF
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4784-89

AGENCY DKT. NO. 89-385

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
RALPH D'AMBROSIO,
Respondent.

Charles Kimmel, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Ralph D'Ambrosio, respondent, pro se

Record Closed: February 2, 1990 Decided: March 15, 1990

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Department of Law and Public Safety, Division of Gaming Enforcement (Division), alleges that respondent Ralph D'Ambrosio committed criminal misconduct which was inimical to the policies of the Casino Control Act (Act) under section 86c (2) and, further, that respondent lacks the requisite good character, honesty and integrity for licensure, pursuant to section 89b (2) of the Act. The Division, therefore, seeks and order issued by the Casino Control Commission

(Commission) revoking respondent's casino hotel employee registration and his casino employee license, pursuant to N.J.S.A. 5:12-129.

This matter was transmitted from the Commission to the Office of Administrative Law (OAL) on June 22, 1989, 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 28, 1989 at which, among other things, the issues to be determined were set forth and the hearing date of February 2, 1990, was established. The hearing was held as scheduled at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record was considered closed on February 2, 1990.

ISSUES

The issues agreed upon by the parties to be resolved by this tribunal are these:

A. Whether respondent's continued licensure and registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c (2) because he is alleged to have committed a violation of N.J.S.A. 2C:20-3, Theft by Unlawful Taking?

B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b (2)?

The prehearing order also sets forth, at section V, the following stipulation:

> Respondent's casino employee license and casino hotel employee registration are under suspension by Order of the Casino Control Commission dated June 22, 1989, pending final disposition of this matter.

UNCONTESTED FACTS

Based upon the documents proffered by the Division and respondent's testimony, the following facts are neither contested nor in dispute. They are, therefore, hereby adopted as **FINDINGS OF FACT**.

Respondent is currently 67 years of age, having retired from the United States Department of Defense and subsequently procured casino hotel employee

registration no. 59219-40 and casino employee license no. 61466-21. On or about April 9, 1989, respondent was employed by the Trump Castle Hotel and Casino as a slot attendant. On April 9, 1989, respondent was the subject of surveillance by Shift Supervisor Peter LiPuma who observed respondent removing coins from various slot machines illegally. Detectives Joseph Eden and W. Higgins of the New Jersey State Police (NJSP) conducted an investigation of respondent. It was determined that respondent had a total of $95.50 in various United States coins and Trump Castle tokens on his person. Detective Eden stated on his Investigation Report that respondent asserted that he took the money from various slot machines over a period of two or three days (P-2). Respondent was placed under arrest by Detective Eden (P-3). A NJSP Property Report of the money found on respondent's person was prepared which listed the following:

Eighty-one (81) Castle $1.00 tokens	$	81.00
Nine (9) U.S. Currency - .50¢		4.50
Forty (40) U.S. Currency - .25¢		10.00
Total	$	95.50 (P-4)

On April 28, 1989, respondent appeared before the Atlantic City Municipal Court on a complaint and summons where respondent was adjudged to be guilty of violating N.J.S.A. 2C:20-3, theft by unlawful taking. Respondent was subject to a fine of $50 and $25 in court costs, plus the penalty of $30 to the Violent Crimes Compensation Board (VCCB). Respondent admits to the taking.

CONTESTED FACTS

Although respondent admits that he illegally took money and tokens from certain slot machines, he denies that the total of $95.50 found on his person on April 9, 1989 was all from his taking. He asserted that some of that total amount, represented tip money given to him by patrons. Respondent was unable to state what amount of the $95.50 represented his own money.

Respondent offered a series of documents (R-1 through R-11) which related to his former position with the United States Department of Defense. Respondent

offered no live testimony nor documentation concerning his good character, honesty and integrity concerning the events of April 9, 1989, or subsequent thereto.

DISCUSSION AND CONCLUSION

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 licensee 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 or registration." The Division contends that respondent D'Ambrosio's alleged violation of N.J.S.A. 2C:20-3 constitutes a violation of section 86c(2) and that, accordingly, his license and registration should be revoked.

Disqualifying Offense Under Section 86c (2) of the Act

Section 86c (2)of the Act is commonly referred to as the "inimical clause." In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License (Resorts), Casino Control Commission No. 79-CL-1 (February 26, 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 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 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.

In the enabling legislation authorizing casino gaming, the Legislature set forth specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. Specifically, section 1b (6) of the Act states that:

> 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.

Our Supreme Court emphasized the significance of strict regulation of all phases of the casino industry in Knight v. Margate, 86 N.J. 374, 381 (1981), where it said:

> 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. 5:12-1b(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."

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, (N.J. App. Div., July 11, 1985, A993-82T5, A-317-84T5, A-525-84T5, A-880-84T5) (unreported at 17) 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.

The Division contends that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-3; theft, which under the circumstances renders continued licensure and registration to be inimical to the Act.

> N.J.S.A. 2C:20-3a defines the crime of theft as follows:
>
> A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

In the matter of Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 at 313, the Commission quoted from Resorts and the criteria for determination as to

whether an offense is inimical to the Act. The Commission continued to hold in Davis that rehabilitation under sections 90h and 91d of the Act do not apply to disqualifying convictions under section 86c (4) (now section 86c (2)). However, many of the factors of these two sections of the Act are to be considered within the inimical analysis. Those enumerated factors in section 90h, which apply to a claim of rehabilitation by a casino employee license applicant, are as follows:

> (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 (licensee) 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 recommendation of persons who have or have had the applicant under their supervision.

First, respondent is the holder of a casino hotel employee registration no. 59219-40 and a casino employee license no. 61466-21. Respondent was last employed as a slot attendant with the Trump Castle Hotel and Casino until his termination on April 9, 1989. As a slot attendant, respondent had direct and frequent contact with gaming patrons. Respondent seeks to retain both his registration and license.

Second, the offense of theft is a serious offense. Although respondent admits that he committed the offense and is aware that his conduct was wrong, he

attempts to minimize the seriousness of the event by asserting that he does not know why he committed the offense and suggests that it could have been an attack of senility or that he was possessed by the devil. Notwithstanding that he committed the act of theft, respondent asserts he is not a thief.

Respondent, as a slot attendant, held the confidence and trust of his employer to guard and protect the employer's interests. Respondent betrayed that confidence and trust when he committed the offense of theft against his employer, Trump Castle.

Third and fourth. The offense was committed while respondent was employed and performing his duties as a slot attendant. He had direct access to the slot machine hoppers where the coins and Trump Castle tokens collected. On April 9, 1989, respondent was observed opening several of the machines and removing coins and tokens for his own use.

Fifth and sixth. Respondent was 67 years of age when the theft was committed. Respondent asserted at the hearing that the offense was a one-time occurrence. However, the NJSP Investigation Report executed by Detective Joseph Eden asserts that respondent admitted to taking the money from various slot machines over a period of two or three days (P-2). I am persuaded that the offense was not an isolated event.

Seventh and eighth. There were no social conditions which contributed to respondent's conduct or to the offense. Respondent provided no evidence of any rehabilative efforts either through counselling or psychiatric treatment. Nor did he submit any recommendations of persons who have or have had the applicant under his supervision.

Having carefully considered the record and facts concerning the issue of inimicality, I **CONCLUDE** that the Division has carried its burden of proof to demonstrate that respondent's conduct of committing a theft of coins and tokens, which was the property of his employer, Trump Castle, is inimical to the Act and to the gaming industry. I further **CONCLUDE** that such conduct is disqualifying, pursuant to N.J.S.A. 5:12-86c (2).

Good Character, Honesty and Integrity as Required by Section 89b(2) of the Act.

Pursuant to N.J.S.A. 5:12-89b(2), respondent is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra, In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that respondent possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Respondent produced eleven documents, all of which related to his former position with the United States Department of Defense. He offered no live testimony nor documentary evidence by individuals who knew of his arrest and conviction for the theft offense. There was no evidence of respondent's good character, honesty and integrity supplied by members of his community, former co-workers or supervisory staff representing his casino industry employment. In short, respondent presented no evidence to demonstrate that he has met the standards for licensure as required by section 89b (2) of the Act.

Considering all of the circumstances regarding this issue, I **CONCLUDE** that respondent has failed to meet his burden of proof, by clear and convincing evidence,

that he does in fact possess the requisite good character, honesty and integrity for continued licensure in the casino industry.

Accordingly, I **CONCLUDE** that respondent is disqualified from continued licensure by virtue of his failure to affirmatively establish his good character, honesty and integrity, as required by N.J.S.A. 5:12-89b (2).

ORDER

Accordingly, it is hereby **ORDERED** that the hotel casino employee registration no. 59219-40 and the casino employee license no. 61466-21 issued to and held by Ralph D'Ambrosio be and are hereby **REVOKED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

15 March 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

3/20/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 2 1 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Ralph D'Ambrosio

For the Respondent:

Ralph D'Ambrosio

EXHIBIT LIST

For the Petitioner:

P-1 Complaint, Summons, Disposition
P-2 Investigative Report dated 4-9-89
P-3 Arrest Report dated 4-9-89
P-4 Property Report dated 4-9-89

For the Respondent:

R-1 Letter dated 9-23-77
R-2 Letter dated 9-20-77
R-3 Letter dated 5-13-77
R-4 Letter dated 7-1-77
R-5 Certificate dated 5-19-77
R-6 Certificate dated 6-11-69
R-7 Quality Salary Increase dated 5-19-68
R-8 Photograph dated 7-69
R-9 Photograph
R-10 Certificate dated 10-5-84
R-11 Newspaper dated 1-29-65

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-308
REGISTRATION NO. 071434-40
OAL DOCKET NO. CCC 03495-89
ORDER NO. 90-20-6

MOTION FOR REHEARING IN STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

KENNETH DAVIS,

Respondent.

ORDER

A motion pursuant to N.J.S.A. 5:12-107d.(1) having been timely filed by the respondent requesting reconsideration of the Commission's order of February 21, 1990, by which the respondent's casino hotel employee registration was revoked; and the Commission having granted that motion on April 18, 1990, for good cause shown; and the respondent having submitted three documents for the Commission's consideration contending that these documents, together with the evidence already in the record, established his rehabilitation pursuant to N.J.S.A. 5:12-91(d); and the Division having advised that it opposed the finding of rehabilitation or waiver under N.J.S.A. 5:12-91(e) but that no further evidential proceedings in the Office of Administrative Law were required; and the Commission having considered the record in this matter as expanded by the three documents which were received in evidence as exhibits R-2, R-3 and R-4 at its public meeting of May 16, 1990, and having resolved for the reasons stated on the record to vacate its prior

order of revocation, to reject the initial decision in which the ALJ found that the respondent was disqualified, to find the respondent rehabilitated from his otherwise disqualifying conviction and to dismiss the within complaint, for good cause shown,

IT IS on this 23rd day of May 1990, ORDERED that Order No. 90-6-13 dated February 21, 1990, be and hereby is vacated; and

IT IS FURTHER ORDERED that the initial decision filed by the ALJ on December 12, 1989, be and hereby is rejected; and

IT IS FURTHER ORDERED that the respondent is found rehabilitated pursuant to N.J.S.A. 5:12-91(d) based upon the following considerations:

> (1) the respondent's offense took place more than six years ago; (2) the respondent's role in the offense was minor and he cooperated with the authorities in the prosecution of those whose involvement was more significant; (3) the respondent has had no subsequent criminal involvement and has remained drug free; (4) the respondent has a generally positive work record in the casino industry; and (5) the respondent has volunteered his time to work with youths in the Police Athletic League and the community; and

IT IS FURTHER ORDERED that the complaint filed by the Division against respondent Kenneth Davis be and hereby is dismissed.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-308
REGISTRATION NO. 71434-40
OAL DOCKET NO. CCC 03495-89
ORDER NO. 90-6-13

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

Complainant,

v. ORDER

KENNETH DAVIS,

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; and the Commission having considered the entire record of these proceedings at its public meeting of February 7, 1990,

IT IS on this 21ST day of February 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Kenneth Davis 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3495-89

AGENCY DKT. NO. 89-308

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
KENNETH DAVIS,
Respondent.

Charles F. Kimmel, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Kenneth Davis, respondent, pro se

Record Closed: October 10, 1989 Decided: December 7, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) alleging that while serving in the United States Armed Forces respondent Kenneth Davis was charged and convicted by the United States Army with Possession of Controlled Dangerous Substance (cocaine less than 3.5 grams) With Intent to Distribute, contrary to 10 U.S.C.A. § 912 (a) (West 1983), comparable to N.J.S.A. 2C:35-5a (1) and Conspiracy (to Distribute Controlled

Substances), contrary to 10 U.S.C.A. § 881 (West 1983), which is comparable to N.J.S.A. 2C:5-2a (1). The Division further alleges that respondent's conduct disqualifies him from holding a casino hotel employee registration, pursuant to section 86g of the Casino Control Act (Act) which incorporates section 86c (1) of the Act and, therefore, seeks to revoke said casino hotel employee registration.

The Division filed its complaint with the Commission on March 28, 1989. On May 2, 1989, respondent requested a hearing and on May 8, 1989, the matter was transmitted to the Office of Administrative Law (OAL) 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 5, 1989 at which, among other things, the issues to be determined by this administrative tribunal were set forth and the hearing date established.

The hearing was held on October 10, 1989 at the Atlantic County Civil Courthouse, Atlantic City, New Jersey with the record closed on that date. The request and application for an extension to execute this initial decision was granted.

ISSUES TO BE DETERMINED

Pursuant to the prehearing order, the following issues are to be determined by this tribunal:

A. Whether respondent was convicted of a crime, while serving in the United States Armed Forces, listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: Possession of Controlled Dangerous Substance (cocaine less than 3.5 grams) with Intent to Distribute, contrary to 10 U.S.C.A. § 912 (a), comparable to N.J.S.A. 2C:35-5?

B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act?

UNCONTESTED FACTS

Based upon the testimony adduced at the hearing and the documents entered into evidence, the following facts are neither contested nor in dispute. I, therefore, adopt the following as **FINDINGS OF FACT** in this matter:

On or about April 8, 1985, while serving with the United States Army, Company A, Headquarters Command, Fort Dix, New Jersey, respondent was charged with two violations of General Military Law, Uniform Code of Military Justice. The charges alleged that respondent, who then held the grade of Specialist Four, had wrongfully possessed cocaine in an amount less than 3.5 grams with the intent to distribute the controlled dangerous substance in violation of 10 U.S.C.A. § 912a and, that he had engaged in a conspiracy to possess with the intent to distribute the controlled dangerous substance in violation of 10 U.S.C.A. § 881. Respondent was subsequently arraigned and appeared before a General Court-Martial where he entered pleas to both counts. On or about June 28, 1985, respondent was sentenced as follows: Reduced in grade to E-1; forfeit all pay and allowances; confined for one year; and, dishonorably discharged from the service (P-1). On June 17, 1986, respondent's conviction and sentence was upheld by the United States Court of Military Appeals.

Respondent was 31 years of age when he was sentenced for the offenses. At the time of the herein hearing, respondent was 35 years of age. He served nine months of the one year sentence of confinement and was dishonorably discharged from the United States Army upon completion of the incarceration.

Respondent was not employed at the time of the hearing. However, he was engaged in a job training program and was to begin blackjack dealer school on or about November 20, 1989. He had been in receipt of Unemployment Insurance benefits (UIB) since about June 1989.

Respondent graduated from Pleasantville, New Jersey, High School in 1972 and immediately thereafter enlisted in the United States Army. After serving three years he was honorably discharged in 1975. Respondent was then otherwise employed for three years and reenlisted into the Army in 1978, where he remained until his dishonorable discharge on July 14, 1986. In December 1986, respondent was employed by the Trump Castle Hotel and Casino in its laundry under his casino hotel employee registration. He left that job in April 1989 due to a personality conflict.

Respondent has had no arrests since his discharge from the Armed Forces. He is presently living with his wife and one minor child, a son.

DISCUSSION AND CONCLUSIONS

Casino hotel employee registration - disqualification pursuant to N.J.S.A. 5:12-86q as incorporated into section 86c(1) of the Casino Control Act.

Section 86c(1) of the Act mandates that a person who has been convicted of any one or more of the enumerated offenses under Title 2C of the New Jersey Statutes shall be disqualified from holding a casino license or registration. Respondent was not charged nor convicted under the New Jersey Code of Criminal Justice, Title 2C. Rather, he was convicted under the Federal Statutes pursuant to the Uniform Code of Military Justice, Title 10. The Division contends that the two offenses committed by respondent under the Federal Statutes are analogous to the New Jersey statutes enumerated in section 86c(1) of the Act and that both offenses automatically preclude respondent from holding a casino hotel employee registration. Section 86g of the Act provides, in part, that registration may be denied or revoked if the applicant is or has been found guilty of any of the offenses enumerated in section 86c(1) notwithstanding that the prosecution had not or may not be prosecuted under the criminal laws of New Jersey.

10 U.S.C.A. § 912a provides, in pertinent part, as follows:

> **§ 912a. Art. 112a. Wrongful use, possession, etc. of controlled substances**
>
> (a) Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.
>
> (b) The substances referred to in subsection (a) are the following:
>
> (1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance. ... (Emphasis Supplied)

N.J.S.A. 2C:35-5, provides, in pertinent part, as follows:

> .... [I]t shall be unlawful for any person knowingly or purposely:

(1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or

(2) To create, distribute or possess or have under his control with intent to distribute, a counterfeit controlled dangerous substance.

b. Any person who violates subsection a. with respect to:

(1) Heroin, or its analog, or coca leave and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, or analogs, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecogine, in a quantity of five ounces or more including any adulterants or dilutants, provided there are included at least 3.5 grams of the pure free base drug, is guilty of a crime of the first degree.

...

(3) A substance referred to in paragraph (1) of this subsection in a quantity less than one-half ounce including any adulterants or dilutants, or in a quantity of one-half ounce or more with there being included less than 3.5 grams of the pure free base drug or where the amount of the pure free base is undetermined, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to $50,000.00 may be imposed;

The offense to which respondent plead guilty at his military court-martial, under 10 U.S.C.A. § 912a, is analogous to N.J.S.A. 2C:35-5 and which constitutes a crime of the third degree. Pursuant to section 86c(1) of the Act, a violation of N.J.S.A. 2C;35-5 is a basis to automatically disqualify respondent from holding a casino hotel employee registration.

I **CONCLUDE**, therefore, that the Division has met its burden of proof, by a preponderance of the credible evidence, that respondent committed a disqualifying offense. Accordingly, I **FIND** and **CONCLUDE** that respondent is statutorily disqualified from holding a casino hotel employee registration pursuant to section 86g of the Act as it incorporates N.J.S.A. 5:12-86c(1).

I also **FIND** and **CONCLUDE** that respondent's conviction under 10 U.S.C.A. § 881 (Conspiracy) is sufficiently similar to N.J.S.A. 2C:5-2 as to warrant revocation of his casino hotel employee registration as provided by N.J.S.A. 5:12-86c(1).

Rehabilitation, pursuant to N.J.S.A. 5:12-91d.

A current registrant faced with the existence of one or more section 86 disqualifications in a disciplinary proceeding has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his rehabilitation, pursuant to section 91d of the Act. This statute sets forth eight specific criteria to be evaluated when a determination for rehabilitation is to be made. Section 91d of the Act provides as follows:

> (1) The nature and duties of the registrant's position;
> (2) The nature and seriousness of the offense or conduct;
> (3) The circumstances under which the offense or conduct occurred;
> (4) The date of the offense or conduct;
> (5) The age of the registrant when the offense or conduct was committed;
> (6) Whether the offense or conduct was an isolated or repeated incident;
> (7) Any social conditions which may have contributed to the offense or conduct;
> (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.

First, respondent is not presently employed in the hotel/casino industry although he holds casino hotel employee registration no. 71434-30. He was employed under his registration by Trump Castle Hotel and Casino in its laundry, however, he resigned his position due to a personality conflict. Respondent represents that he is to commence blackjack dealer school.

Second, respondent's disqualifying offenses of conspiracy and possession of controlled dangerous substances with intent to distribute were of such a serious nature that he was sentenced by a United States Military Court to: a reduction in grade, the forfeiture of all pay and allowances, confinement for one year and a dishonorable discharge from the United States Army. The sentence was affirmed on appeal. Respondent served nine months of the twelve month sentence.

Third, respondent asserts that he acted as the middleman to the drug supplier and ultimate distributor. The distributor requested that respondent receive mail from Columbia at respondent's home address in exchange for cocaine for respondent's personal use. Respondent acceded to the drug distributor's request and did, in fact, receive mail containing cocaine from Columbia at his home address.

Fourth and Fifth. Respondent was in receipt of mail from Columbia containing cocaine during the months of May 1984 until August 1984, when he was 31 years of age.

Sixth, the offense was continuous and repeated for a period of at least three months in 1984.

Seventh, there were no social conditions which contributed to respondent's conduct other than his assertion that he engaged in the illegal activity because he wanted to "be one of the boys."

Eighth. Respondent proffered documents to establish his rehabilitation. A 90-day probationary evaluation from Trump Castle, dated April 16, 1987, indicated a "very good" to "outstanding" evaluation of his job performance and other qualities of his behavior (R-1). Other documents indicate that respondent had successfully completed Trump's Castle Upward Mobility Program and a course in human relations conducted by the American Hotel and Motel Association. A letter from Captain Kenneth H. Boone, Trial Counsel, Department of the Army, Office of the Staff Judge Advocate, Fort Dix, New Jersey to the Commander of the United States Facility at Fort Riley, Kansas reads as follows:

> 1. This is to inform you of the cooperation provided by SP4 Kenneth Davis, 138-50-0436, in the court martial of SP5 Carlos Tuero. Without his testimony at the Article 32 hearing and willingness to testify at trial, it is unlikely that the government would have had a case against SP5 Tuero.
>
> 2. Considering the minor role he played in the conspiracy of which he was convicted, his confession, guilty plea, and later cooperation with the government, I believe SP4 Kenneth Davis has taken important steps towards rehabilitation.

Respondent admits to the use of cocaine. His military record also reveals that he was disciplined for the wrongful use of marijuana (P-1). He failed, however, to produce any evidence that his use of cocaine and other controlled dangerous substances had ceased. There are no medical, psychological or counseling reports (or testimony) to demonstrate that respondent has, in fact, reformed his former behavior and discontinued the use of illegal substances. It is also noted that at the time respondent committed the offenses he was 31 years of age; no mere youth but, rather, an adult of substantial age.

A careful review of the documents presented by respondent also reveals that the 90-day evaluation from Trump's Castle is dated April 16, 1987 and Captain Boone's letter is dated November 1, 1985. Nothing of any significance to illustrate his present rehabilitative status was offered.

Having carefully considered all of the factors enumerated in N.J.S.A. 5:12-91d, and having given fair weight thereto, I am not persuaded that respondent has met his statutory burden of establishing rehabilitation. He has failed to present sufficient evidence upon which this administrative tribunal may reasonably conclude that he is, in fact, rehabilitated.

I **CONCLUDE**, therefore, that respondent has failed to affirmatively establish his rehabilitation, pursuant to N.J. S.A. 5:12-90d.

ORDER

Accordingly, it is **ORDERED** that the casino hotel registration no. 71434-40, issued to Kenneth Davis be and is hereby **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION** who 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

7 December 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Kenneth Davis

For the Respondent:

Kenneth Davis

EXHIBIT LIST

For the Petitioner:

P-1 11 page document, captioned "United States of America, Department of the Army"

For the Respondent:

R-1 Letter, dated November 1, 1985, from Kenneth H. Boone, Captain, Department of the Army

Certificate of successful completion for participation in the Royal Upward Mobility Program, Trump Castle

Letter dated January 28, 1987, from Ivana M. Trump, Trump Castle
Schedule notice for JTPA

Certificate of successful completion from the Educational Institute of the American Hotel and Motel Association
2 90-day probationary evaluation, Trump Castle

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-296
APPLICATION NO. 070055-22
(REGISTRATION NO. 056780-40)
OAL DOCKET NO. CCC 01513-89
ORDER NO. 90-18-12

APPLICATION OF WALLACE R. DESHIELDS

FOR A CASINO EMPLOYEE LICENSE — ORDER

A hearing 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 May 2, 1990,

IT IS on this 3rd day of May 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1513-89
AGENCY DKT. NO. 89-EA-296

WALLACE R. DE SHIELDS,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Wallace R. DeShields, petitioner, pro se

R. Lane Stebbins, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: October 24, 1989 Decided: March 29, 1990

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

STATEMENT OF THE CASE

This matter concerns the application of Wallace R. DeShields (petitioner) for licensure as a casino employee. This would permit his employment in a licensed casino facility in a non-gaming capacity. By letter report to the Casino Control Commission dated December 22, 1988, the Division of Gaming Enforcement objected to licensure of the petitioner, based upon his record of arrests. This is the issue:

Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

The petitioner's request for a hearing on his license application was received by the Casino Control Commission on February 24, 1989. On March 2, 1989, the Commission transmitted this 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 telephone prehearing conference was held on May 9, 1989. The hearing was thereafter held as scheduled in Absecon, New Jersey, on October 24, 1989. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are essentially undisputed. The petitioner is a 37-year-old resident of Northfield, New Jersey. He is married and at the time of the hearing in this matter, his wife was expecting the birth of their child. The petitioner is employed as a driver for Custom Limousine, and he works from 10 to 20 hours per day, five days per week. The petitioner attended Glassboro State College for three and one-half years and he is presently taking courses at Stockton State College.

Division of Gaming Enforcement Agent Charles Hale testified at the hearing that he conducted an investigation concerning the petitioner's license application. This included a routine check of various law enforcement records to determine if there was any negative information concerning the petitioner. In addition, the petitioner had included with his license application a copy of a presentence investigation report (Exhibit R-2) prepared in 1983. The report revealed that the petitioner had been arrested on 19 occasions between 1971 and 1982. Agent Hale also obtained an FBI report which indicated that the petitioner had one additional arrest in January 1986 (Exhibit R-1).

According to Agent Hale, he interviewed the petitioner in person and they discussed each of the petitioner's arrests. The first occurred in July 1971, when the petitioner was 18 years old. He was charged by the Camden City Police Department with possession of marijuana. The charge was subsequently dismissed. The petitioner was next arrested by the Moorestown Police on March 9, 1977, and charged with use of a stolen or lost credit card. This charge was later dismissed.

The petitioner's next arrest occurred in SanDiego, California, on August 8, 1977. He was charged with theft and receiving stolen property. Although the theft

charge was dismissed, the petitioner was convicted of receiving stolen property and he received a jail sentence for the time already served and a two-year probationary term. When Agent Hale questioned the petitioner about an October 19, 1977 arrest in SanDiego, the petitioner stated that he had received a suspended sentence for theft.

Agent Hale testified that he discussed with the petitioner a March 16, 1978 arrest by the Camden Police Department for shoplifting. This charge was dismissed by the Camden Municipal Court. The petitioner was again arrested on April 1, 1978 and charged with being drunk and disorderly (Exhibit R-3). A $75 fine was suspended and the petitioner was ordered to pay $25 costs. On May 18, 1978, the petitioner was arrested by the Glassboro Police Department and charged with shoplifting. He was subsequently convicted of this offense and was fined $125.

The petitioner's next four arrests occured in March 1979. He was charged by the Cherry Hill Police Department with shoplifting on March 16, 1979. He was again charged by the Cherry Hill Police Department with shoplifting on March 21, 1979. In May 1980, the petitioner was found guilty on these charges and received a 60-day suspended sentence and two years of supervised probation. On March 24, 1979, the petitioner was arrested by the Merchantville Police Department and charged with two counts of shoplifting. Upon conviction of both counts, the petitioner was fined $100 and $25 costs on one count and fined $350 and $25 costs on the other count. According to Agent Hale, the petitioner told him that he took hams and cologne from a store in order to get money for alcohol and drugs. The petitioner was next arrested by the Camden Police Department on March 29, 1979 and charged with shoplifting. He was convicted of this charge and was fined $250 and ordered to pay $20 costs. Agent Hale testified that the petitioner said he took luggage in order to get money to pay for drugs.

On April 12 and April 24, 1979, the petitioner was arrested respectively by the Merchantville Police and the Camden Police and charged on both occasions with shoplifting. Both convictions resulted in $250 fines and the payment of costs (Exhibit R-7). The petitioner again explained to Agent Hale that he had taken items which he intended to sell so that he could buy drugs and alcohol.

On May 22, 1979, the petitioner was arrested by the Cherry Hill Police and charged with shoplifting. He was subsequently found guilty and given a 60-day suspended

sentence, and he was placed on probation for two years. On May 30, 1979, the petitioner was arrested in Voorhees Township by the Patco High Speed Line Police. The petitioner was charged with a disorderly persons theft offense. He subsequently entered a plea of guilty and was given a suspended 30-day county jail sentence and placed upon one-year probation. The petitioner was also ordered to pay a $100 fine.

On June 5, 1979, the petitioner was arrested by the Camden Police and charged with shoplifting and possession of a controlled dangerous substance. He subsequently was convicted of the shoplifting offense and was fined $150. In regard to the possession of a controlled dangerous substance offense, the petitioner received a conditional discharge which was successfully completed. Agent Hale testified that the petitioner said he took items from a store in order to sell them and use the proceeds to buy drugs. The petitioner eventually was admitted to a rehabilitation center in Blackwood, New Jersey for one year of in-patient treatment and eight months of out-patient treatment for his drug and alcohol problems.

Agent Hale testified that the petitioner's next arrest occurred on July 3, 1979. He was charged by the Pennsauken Police with shoplifting. Upon his conviction, he was given a 30-day suspended jail sentence and one-year probation. The petitioner was also fined $250. He was next arrested by the Camden Police on April 6, 1980 and charged with theft by receiving stolen property. Although this charge was dismissed, the petitioner admitted to Agent Hale that he had stolen silverware from Bamberger's Department Store and was trying to sell it so that he could buy alcohol and drugs.

On December 12, 1982, the petitioner was arrested by the Washington Township (Gloucester County) Police and was charged with shoplifting. He was later convicted of this offense and was fined $250. He was also given a six-month suspended jail sentence and was placed on probation for a period of one year (Exhibit R-9). The petitioner told Agent Hale that he took the items so that he could sell them and buy drugs. On December 22, 1982, the petitioner was arrested by the Glassboro Police and charged with nine counts of writing bad checks (Exhibit R-10). The petitioner told Agent Hale that he had written checks while there were insufficient funds in his account. He admitted that he had been purchasing goods to sell so that he could buy drugs. The petitioner also told Agent Hale that he had been convicted and had been sentenced to serve a jail term of six months in the Gloucester County Jail.

The petitioner's last arrest occurred on January 20, 1986. He was charged by the Stratford Police with shoplifting. He was convicted in Municipal Court on April 9, 1986, and sentenced to 30 days in the county jail. Again, the petitioner told Agent Hale that he had stolen items so that he could sell them to buy drugs (Exhibit R-11).

Testifying on his own behalf, the petition candidly acknowledged and admitted his entire criminal arrest and conviction record. He stated that he is ashamed and embarrassed by it. According to the petitioner, he had used alcohol and drugs since high school and all of his criminal conduct occurred while he was under the influence.

In 1986 the petitioner was admitted to the Glenn Bay Hospital for a 28-day rehabilitation program. The petitioner stated that he went there because he wanted to, not because it would please the courts. As a result, he has been drug and alcohol-free since September 1986. The petitioner also had a year of aftercare following his release from Glenn Bay. It was his testimony that he attends an alcoholics anonymous or narcotics anonymous meeting at least twice a week.

The petitioner holds casino hotel employee registration number 56780-40. The non-gaming casino employee license which he seeks would permit his employment in a licensed casino as a bar porter. While acknowledging that he has had a drug and alcohol problem, the petitioner testified credibly that he will be able to resist these substances if he obtains the license which he seeks. He believes that drugs are readily available at casinos, but his fear and memories of his prior conduct under the influence will keep him from indulging again.

The petitioner offered numerous documents into evidence. Exhibit P-1 is a report from the New Jersey Higher Education Assistance Authority concerning the petitioner's outstanding balance on a studen loan. As of October 6, 1989, the petitioner had repaid $1,833.54 and had a total outstanding balance of $3,808.03. According to the petitioner, Exhibit P-2 represents proof of his payment in full of another loan. Exhibits P-3 and P-4 establish that the petitioner had fully settled his Citicorp Visa charge account. Exhibits P-5 and P-6 establish that the petitioner's Citibank Mastercard charge account was paid in full as of September 1988.

A letter from Frederick A. Earle, Ph.D., of the Therapeutic Intervention Centers in Atlantic City was admitted into evidence as Exhibit P-8. Dr. Earle reports that the petitioner successfully completed his chemical dependence rehabilitation program in September 1986. He confirms that the petitioner has been drug-free for the past three years. Custom Limousine Service Office Manager Gina M. Walk wrote in a letter dated October 23, 1989, that the petitioner is a very outstanding employee and that "no employer could ask for any finer." Her letter was admitted into evidence as Exhibit P-9. Coworker Cindy McCoy wrote that the petitioner is a responsible and conscientious individual and that she admires his honest and intellegent way of dealing with those around him (Exhibit P-11).

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualification. Section 90 of the Act describes the qualification standards for casino employee licensure and it incorporates by reference the standards of section 89. 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 good character, honesty and integrity.

The Division of Gaming Enforcement has objected to the petitioner's license application, based upon his record of arrests and convictions between 1971 and 1986. During that 15-year period, the petitioner was arrested in a number of jurisdictions, for a variety of offenses. The petitioner was convicted on 16 occasions, in the main for theft or shoplifting.

The credible evidence in the record establishes that the petitioner's arrests arose from his prolonged alcohol and drug abuse. His last arrest occurred in January 1986. From August 29, 1986, to September 27, 1986, the petitioner successfully completed a alcohol and drug rehabilitation program. He has since undergone out-patient counselling and he attends alcoholics anonymous or narcotics anonymous sessions weekly.

The petitioner has maintained his present employment for the past two years. He is well thought of by his superiors and is respected by his coworkers. They see him as an honest and reliable man. There can be no doubt that the petitioner's arrest and conviction record impacts negatively on his qualifications for licensure. However, the seriousness of that record is diminished significantly by the petitioner's attitude and conduct for the past three years. Having reviewed all of the credible evidence in this matter, I am convinced that the petitioner set his life on a new course three years ago and that he has established by clear and convincing evidence that he presently possesses the good character, honesty and integrity required for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Act. I so **CONCLUDE.**

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Wallace R. DeShields for licensure as a casino employee permitting him to work in a licensed casino as a non-gaming employee be **GRANTED.**

This recommended decision may be adopted, 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, 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

3/29/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 2 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For petitioner:

P-1	Student loan payment record
P-2	Glassboro Student loan satisfaction
P-3	Visa payment record
P-4	Visa payment record
P-5	Mastercard payment record
P-6	Mastercard payment record
P-7	Peoples Bank payment record
P-8	Letter from Dr. Earle, dated October 23, 1989
P-9	Letter from Gina Walk, dated October 23, 1989
P-10	Letter from Ray Munzi, dated October 19, 1989
P-11	Letter from Ciny McCoy
P-12	Stockton State College course record

For respondent:

R-1	FBI arrest and conviction record
R-2	Gloucester Probation Department presentence investigation report
R-3	Cherry Hill Police Department arrest card, dated April 1, 1978
R-4	Cherry Hill Police Department arrest card, dated March 16, 1979
R-5	Cherry Hill Police Department arrest card, dated March 21, 1979
R-6	Merchantville Police Department incident report, dated March 24, 1979
R-7	Merchantville Police Department incident report, dated April 12, 1979
R-8	Cherry Hill Police Department arrest card, dated May 22, 1979
R-9	Washington Township Police Department Arrest report, dated December 12, 1982
R-10	Glassboro Police Department arrest report, dated December 22, 1982
R-11	Stratford Police Department incent report, dated January 20, 1986
R-12	Not in evidence
R-13	Not in evidence

WITNESSES

For petitioner:

Wallace R. DeShields

For respondent:

Charles Hale

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-270
APPLICATION NO. 075105-21
OAL DOCKET NO. CCC 239-89
ORDER NO. 90-12-7

APPLICATION OF PAUL J. DOWNEY
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Chair having agreed to expand the record to include the exhibits designated as R-3A, R-3B, R-4, R-5, P-5 and P-6; and the Commission having considered the entire record of these proceedings at its public meeting of March 21, 1990,

IT IS on this 2nd day of April 1990, ORDERED that the initial decision is modified as follows:

(1) to reject the ALJ's ruling that the Division's exhibits R-3, R-4 and R-5 should be excluded because the evidence created a risk of undue prejudice. Incorporating the Chair's ruling on the admissibility of the resubmitted version of R-3 (R-3A and R-3B) as well as R-4, R-5, P-5 and P-6 the Commission finds that the probative value of this evidence is not significantly outweighed by any inherently inflammatory potential that would preclude a reasonable and fair evaluation of the basic issues in this case; and

(2) to reject the misinterpretation of section 107(a)(6) and Commission precedent contained within the ALJ's assertion that, while the Commission has rejected the residuum rule as applying to cases under the Casino Control Act, it nevertheless reintroduced "... some of the language of the residuum rule by making it a condition precedent to a finding of fact that reports such as these be either corroborated, uncontradicted... or undisputed by the person against whom the matter is sought to be admitted. Init. dec. at 6. Section 107(a)(6) establishes no conditions to the use of hearsay evidence other than the determination that the evidence be of the sort on which responsible persons are accustomed to rely in the conduct of serious affairs. Matters such as the existence of corroborating or contradictory evidence are but a few of the several factors to be considered in evaluating the reliability of evidence that is not legally competent evidence. A more complete listing of factors can be found in 3 Davis Administrative Law Treatise (2d ed. 1980), Section 16.6 at 243; and

(3) to find R-4 and R-5 sufficiently reliable to establish that Mr. Downey was fired from his job at Trump Plaza for dishonesty. However, this finding does not bear upon the question of whether Downey was, in fact, dishonest. Based upon the present record, R-3A, R-3B, P-5 and P-6 would appear to support a finding that in 1985 Mr. Downey committed the disorderly persons offense of theft by unlawful taking in violation of N.J.S.A. 2C:20-3. However,

the applicant was not afforded a fair opportunity to controvert or explain this evidence as a result of the ALJ's exclusionary ruling. A remand would be required before such a finding could be entered. Upon consideration of the Division's exceptions in which it is essentially conceded that the evidence in the record as a whole could support a finding that the applicant is rehabilitated, for the reasons expressed by the ALJ at pp. 3-5 of the initial decision in support of his finding of rehabilitation, and upon our own independent evaluation of all the factors outlined in section 90, the Commission finds that even if the theft offense were assumed to be established, it is not one which renders Mr. Downey disqualified pursuant to N.J.S.A. 5:12-86(c)(2). Because there is significant overlap of the proofs necessary to establish rehabilitation and those necessary to establish good character, the Commission further finds that the ALJ's conclusion that Mr. Downey possesses the requisite good character, honesty and integrity for casino employee licensure is supported by the preponderance of the credible evidence in the record. See In the Matter of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 79-EA-113 (Commission Decision April 22, 1980).

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /rm

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 239-89
AGENCY DKT. NO. 89-EA-270

IN THE MATTER OF
THE APPLICATION OF
PAUL J. DOWNEY
FOR A CASINO
EMPLOYEE LICENSE

Lloyd D. Levenson, Esq., for petitioner (Cooper, Perskie, April, Niedelman, Wagenheim & Levenson, attorneys)
Norma L. Stancil, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: December 22, 1989 Decided: February 2, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) on or about December 2, 1988, recommending that the Commission deny the application of the petitioner for a casino employee gaming license. The petitioner had allowed his previous casino employee gaming license to lapse. The petitioner requested a hearing on January 5, 1989, and the matter was transmitted to the Office of Administrative Law (OAL) on January 12, 1989, to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted on March 17, 1989, before Stephen W. Thompson, Administrative Law Judge (ALJ), and a prehearing order was issued identifying the issues to be resolved at a plenary hearing as (1) whether or not the petitioner was convicted of a crime enumerated in the Casino Control Act (Act) and described as a disqualification from casino licensure, pursuant to N.J.S.A. 5:12-86c (1); the petitioner is alleged to have been convicted of the crime of possession of cocaine with the intent to distribute it; (2) whether the petitioner has the good character, honesty and integrity for casino employee licensure required by the Act, N.J.S.A. 5:12-89b (2) and 90b, and; (3) whether the petitioner is rehabilitated from his drug conviction pursuant to the criteria set forth in N.J.S.A. 5:12-90h.

This Order was amended by the undersigned on October 24, 1989, because the Division amended its objection letter to add the issue of "inimicality" pursuant to N.J.S.A. 5:12-86c (2). The Division charged (4) that petitioner's licensure would be inimical to the policy of the Act and to casino gaming because he is alleged to have committed acts which would constitute theft according to N.J.S.A. 2C:20-3. These acts were not prosecuted, but the Act permits the Division to introduce evidence which would constitute an offense described in the disqualification criteria of the Act. N.J.S.A. 5:12-86g.

A plenary hearing was held on November 13, 1989. The record was continued open so that the Division would have an opportunity to verify affidavits introduced by the petitioner which the Division had not received in discovery due to inadvertence. The affidavits were apparently placed in the mail, but they were not received. The record closed on December 22, 1989, when the undersigned received the final letter from the Division on the verification process.

First Issue

The Division proved and the petitioner admitted that he was convicted by his plea of guilty on January 9, 1984, of possession of cocaine with the intent to distribute it, contrary to N.J.S.A. 24:21-19a (1), since recodified as N.J.S.A. 2C:35-5. This is a disqualification from casino employee licensure pursuant to N.J.S.A. 5:12-86c (1) and 90e. The circumstances of the arrest and conviction will be discussed hereafter. Unless the petitioner can affirmatively demonstrate his rehabilitation

pursuant to N.J.S.A. 5:12-90h, I will conclude that he is disqualified from casino employee licensure based upon his conviction of an enumerated offense.

Second Issue

The Division alleges that the petitioner lacks the good character, honesty and integrity for casino employee licensure required by N.J.S.A. 5:12-89b (2) and 90b. It raises this issue in the letter to the Commission recommending denial of the petitioner's application for licensure by pointing to his criminal record. It is therefore necessary to deal with the issue of rehabilitation prior to any analysis of the petitioner's good character. It can hardly be maintained that an unrehabilitated criminal offender enjoys good character.

Third Issue

The rehabilitation section of the Act permits a criminal offender to avoid disqualification if the offender can affirmatively establish rehabilitation according to certain guidelines. N.J.S.A. 5:12-90h.

The first guideline simply asks what are the "nature and duties of the position applied for." Petitioner seeks licensure as a baccarat dealer. In such a position he will have continuous contact with patrons and their money. He will not be in a position to make policy although he will be charged with following the policy of the Commission and the Act. He will participate directly, but at the entry level, in casino operations.

The second factor in the rehabilitation analysis is the "nature and seriousness of the offense or conduct." Of course, possession of cocaine with the intent to distribute it is a serious offense. Petitioner's offense was treated seriously by the courts. Petitioner was fined $2,500.00 and placed on probation for two years. He also paid a $25.00 VCCB penalty.

The third factor is to determine the "circumstances under which the offense or conduct occurred." The police reports in evidence detail a search of the

petitioner's apartment which he shared with two other persons who were indicted with him. The cocaine was found in a bathroom adjoining the petitioner's bedroom. At the hearing, petitioner acknowledged that this bathroom was his and connected to the master bedroom which only he inhabited. Apparently, narcotics paraphenalia and some marijuana were scattered about other portions of the house. The total weight of the cocaine was approximately 20 grams.

The petitioner, in his plea, exculpated his codefendants, at least from the cocaine charges. He told this tribunal that he possessed cocaine in order to use it and share it with his roommates. This admission satisfies the statute against distribution. One does not have to be a street dealer, or worse, in order to be convicted of distribution. The Division's proofs do not contradict this testimony, except that paraphernalia found was also consistent with street distribution. This is not conclusive however. The admission is the minimum condition necessary to support a conviction for distribution. It is buttressed by the petitioner's explanation that he used cocaine to ease his fear. He suffers from a lung disease. He had once required lung surgery which kept him in the hospital for 40 days. His doctor advised him he would need more surgery. This caused the petitioner to seek solace in cocaine, he claims. The petitioner testified that he no longer uses drugs; his doctor told him that cocaine would kill him due to his lung disease if he continued to use it.

The fourth factor is the date of the offense. It occurred on August 13, 1983. The petitioner admits cocaine use on numerous occasions earlier in the year.

Fifth factor; the petitioner was 30 years old at the time of the arrest.

Sixth factor; the offense continued for a period of time during 1983 but the petitioner has no other criminal convictions.

Seventh factor; there is no evidence that social conditions contributed to the offense or conduct.

Eighth factor; there is significant evidence that the petitioner is rehabilitated. His probation officer testified that petitioner was an outstanding client and fully cooperated with her. He paid his fine and penalty early. He was open and freely discussed his situation with her.

The petitioner also offered testimony and affidavits which indicate that he is a worthy and useful member of society. He has organized a charity benefit on behalf of a friend who was seriously injured and who has since died. He has been active in the National Multiple Sclerosis Society. He has assisted in fundraising activities on behalf of sick and needy children. All of these activities have taken place since petitioner's arrest. They all indicate a satisfactory adjustment.

I **CONCLUDE** that the petitioner is rehabilitated pursuant to N.J.S.A. 5:12-90h and that he is not disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86c(1) and 90e.

Fourth Issue

The Division alleges in its amended letter of objection to the petitioner's licensure, that the petitioner is disqualified from casino employee licensure because he committed an "offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of the Act and to casino operations;..." N.J.S.A. 5:12-86c (2).

It is incumbent upon the Division to prove the existence of an offense under this statute in order to make the inimicality analysis relevant or pertinent. Proof of an offense is the sine qua non of the analysis.

In this case, the Division attempted to prove the existence of a theft offense by offering a "shoppers report" which indicated that the petitioner committed theft by failing to ring up bar sales when he was employed as a bartender at Harrah's Casino Hotel. I deduce from the arguments of counsel that Harrah's employed a firm of "shoppers" to report on its employees.

The firm supplied persons who posed as customers and who observed, for better or worse, the conduct of employees at the casino and casino hotel. While such a report is admissible in evidence in hearings conducted under the authority of the Commission pursuant to N.J.S.A. 5:12-107 and Division of Gaming Enforcement v. Merlino 8 N.J.A.R. 126, 164, 165 (1985), the report was rejected in this case.

The report is hearsay. But hearsay is admissible in all New Jersey administrative hearings. N.J.A.C. 1:1-15.5 and N.J.S.A. 5:12-107. In all administrative hearings except those held under the auspices of the Commission, hearsay is subject to the residuum rule. This rule requires that "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. 1:1-15.5(b).

In the Division of Gaming Enforcement v. Merlino, the Commission rejected the residuum rule and pointed out that the legislature had created a different standard in the Act itself at section 107. That section requires only that evidence be relevant to be admissible, and that it be the "sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs" in order to support a finding.

The Merlino decision, while rejecting the residuum rule, reintroduces some of the language of the residuum rule by making it a condition precedent to a finding of fact that reports such as these be either corroborated, uncontradicted by direct or other reliable testimony or undisputed by the person against whom the matter is sought to be admitted. 8 N.J.A.R. 164, 165. Adoptive admissions for instance are legally competent evidence. R. 63 (8). Nevertheless, Merlino and section 107 permit something less than legally competent evidence to corroborate, but there must be something about the evidence which dignifys it sufficiently to induce responsible persons to rely upon it in the conduct of important business.

The Commission's reasoning was affirmed by the Appellate Division in the same case at 216 N.J. Super. 579 (A.D. 1987), affirmed 109 N.J. 134.

In pretrial discovery, the Division supplied (inadvertently it claims) notes prepared by some unidentified person who compared the shoppers report with the actual cash register tapes and who concluded that the shoppers report was "not a very reliable document." Good faith discovery requires that just this sort of note be provided. N.J.A.C. 1:1-10.1.

The Division had no corroborative evidence in addition to the reports, or to supplement them, only the disclaimer of an unknown person. The petitioner, when

confronted with the evidence, claimed it was "very unjust" and protested his termination based on the reports. The Division would not or could not produce the "shopper" who prepared the report. It did not know who at the casino compared the reports to the cash register tape, and apparently it did not seek to find out. This created a risk of undue prejudice so great that I excluded the report under N.J.A.C. 1:1-15.1 (c) 2, which is essentially similar to R. 4. It is axiomatic that an administrative hearing be "fair."

It is patently unfair to admit evidence which bears directly on the ultimate issue and which is subject to a condition precedent in order to be deemed sufficiently trustworthy to support a finding, when it is known in advance that the condition will not be satisfied or fulfilled. The converse of this statement leads only to mischief and to trial by innuendo and insinuation.

Based on the failure of the Division's proofs, I am unable to find that the petitioner committed an offense and must therefore **CONCLUDE** that the Division has failed to prove by a preponderance of the evidence that the petitioner committed an offense which would indicate that his licensure would be inimical to the policy of the Act or to casino operations as required by N.J.S.A. 5:12-86 c (2).

Second Issue Revisited

The casino enabling act requires all casino employees to prove by clear and convincing evidence that they possess good character, honesty and integrity. N.J.S.A. 5:12-89b(2) and 90b. The legislature did not define "good character, honesty and integrity." It left the business of definition to the Casino Control Commission and to the courts.

The Commission decided that "(t)hese concepts are so commonly employed and so well understood that elaboration is unnecessary." *In re Resorts Casino Application*, 10 N.J.A.R. 244, 250 (1979). The courts have also declined to define the words. Judge Fritz was satisfied that "the words 'good character' in the context of the Casino Control Act leave to men of common intelligence little doubt about their meaning." *In re Boardwalk Regency Casino License*, 180 N.J. Super. 324, 346 (1981), affirmed, 90 N.J. 361. 369.

Cases reported in New Jersey Administrative Reports (N.J.A.R.) also do not contain a definition of good character, honesty and integrity. Opinions merely state that some conduct, or lapse thereof, such as failing to advise the Casino Control Commission about a criminal history, reflects adversely upon the applicant's good character, honesty and integrity. *Marino v. Division of Gaming Enforcement*, 2 N.J.A.R. 176, 182 (1980); *Woodard v. Division of Gaming Enforcement*, 2 N.J.A.R. 231, 236 (1980). Other conduct, such as associating with organized criminals, having a bad attitude towards the regulatory scheme, or engaging in questionable business practices, have been mentioned as reasons for denying licensure to an applicant. Once the conduct is established, the reason given for the denial is the applicant's failure to possess good character, honesty and integrity. *In re Doumani*, 11 N.J.A.R. 407. By requiring that an applicant prove good character, honesty and integrity, the legislature meant to test whether the person was or was not a risk to casino gambling and the public which casinos serve. Character flaws, instances of dishonesty, and a lack of integrity are all indicators that a person is such a risk.

Paul Downey, a convicted but rehabilitated drug offender, does not appear to be such a risk. He has no residuum of drug induced behavior according to his probation officer. He is an open, friendly and caring person according to her testimony. His friends think well enough of him to testify on his behalf. John Polakas, a New York attorney, traveled to Atlantic City in order to describe the petitioner's state of mind during his drug period. Polakas was familiar with petitioner's medical condition and depression in 1983.

Drew Christy, John Inemer and Angela Di Giuseppe prepared certifications on behalf of petitioner. Christy knew petitioner from high school days. He said that petitioner organized a charity benefit for an injured friend. This is a caring act and confirms the probation officer's observations. Di Giuseppe knows petitioner only through the National Multiple Sclerosis Society (MSS) in which he participated as an organizer of the Ugly Bartender Contest, the proceeds of which go to MSS. Inemer, a politician in Philadelphia, utilizes petitioner, not only in elections, but in charity affairs. It is true, based upon petitioner's own testimony, that he is not a "mover and shaker" in charity circles. His participation is limited to setting up chairs, tables and booths and taking them down again when the affair is over, or collecting money from bartenders and forwarding it to the appropriate chairperson.

The Division points out that petitioner incurred two convictions as a young man in Wildwood, New Jersey, during the summer of 1970 and 1972. These disorderly persons offenses were youthful offenses and cannot affect the petitioner's present character since there were no intervening arrests between 1972 and 1983. The arrests were for possession or use of a small amount of marijuana. These arrests were discounted in 1981 when the petitioner was first licensed and can safely be discounted now. This petitioner appears not to be a risk to the casino industry. On the contrary, he appears to be just such a community minded and caring individual as to reflect credit on the industry rather than discredit.

I **CONCLUDE** that the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89(b)2 and 90(b).

I **ORDER** that the letter complaint filed herein be dismissed.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Feb 7 1990
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

2/6/90
DATE

Kim Wade
CASINO CONTROL COMMISSION

Mailed to Parties:

Feb. 7, 1990
DATE

Kayren Fr Vockins
OFFICE OF ADMINISTRATIVE LAW

ldr

WITNESSES

For Petitioner:

Paul J. Downey
John Polakas
Susan Hargis

For Respondent:

Paul J. Downey

DOCUMENTS IN EVIDENCE

P-1 Discovery Package
P-2 Certification of Drew Christy, dated October 31, 1989
P-3 Certification of Angela DiGiuseppe, dated October 31, 1989
P-4 Certification of John M. Inemer, dated July 26, 1989

R-1 Indictment No. 9-1105-83-A
R-2 Judgment of Conviction
R-3 Merit Analyzer Survey
R-4 Notice of Unsatisfactory Performance/Misconduct from Harrah's
R-5 Personal Authorization Form
R-6 Brigantine Police Department Investigation Report
R-7 Brigantine Police Department Arrest Report
R-8 Brigantine Municipal Court Complaint Summons SL-58571
R-9 Brigantine Municipal Court Complaint Summons 46551
R-10 Wildwood Police Department Uniform Arrest Report, dated August 8, 1970
R-11 Wildwood Police Department Uniform Arrest Report, dated August 8, 1972
R-12 Personal History Disclosure Form

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-192; 90-L-4
ORDER NO. 90-21-15
OAL DOCKET NO. CCC 9144-88

APPLICATIONS FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
DORIS E. DUNSTON

ORDER

The Commission having entered an order on September 1, 1989, denying the 1986 and 1989 applications of Doris E. Dunston for renewal of her casino employee license; and the New Jersey Superior Court, Appellate Division, having rendered a decision on April 10, 1990, reversing the Commission's determination and remanding the matter to the Commission for approval of licensure; and the Commission having considered the entire record of the proceedings at its public meeting of May 23, 1990,

IT IS on this 5th day of June 1990, ORDERED that the order of denial entered on September 1, 1989, is vacated; and

IT IS FURTHER ORDERED that the 1986 and 1989 license renewal applications of Doris E. Dunston are granted.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-192
LICENSE NO. 41905-21
OAL DOCKET NO. CCC 2671-88;
CCC 9144-88 (ON REMAND)
ORDER NO. 89-35-10

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
DORIS E. DUNSTON

ORDER

The applicant having filed an emergent motion for relief from the Casino Control Commission determination on August 30, 1989, which in addition to denying her application to renew her casino employee license, precluded her from applying for a casino hotel employee registration; and the Division of Gaming Enforcement having opposed said motion; and the Commission having considered the entire record at its public meeting on the same date; and a motion having failed to gain the vote of the majority of the Commission,

IT IS on this 1ST day of September 1989, ORDERED that the motion is denied.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-192
LICENSE NO. 41905-21
OAL DOCKET NO. CCC 2671-88;
CCC 9144-88 (ON REMAND)
ORDER NO. 89-35-10

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF DORIS E. DUNSTON

ORDER

A hearing 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 exceptions having been filed by both parties; and the applicant having filed a motion for stay of the Commission's determination in this matter; and the Commission having considered the entire record of these proceedings at its public meetings of August 16 and 30, 1989,

IT IS on this 1ST day of September 1989, ORDERED that the initial decision is modified as follows:

(1) to reject the ALJ's determination that the applicant committed the offense of unsworn falsification to authorities contrary to N.J.S.A. 2C:28-3(b)(1). Bally's security personnel to whom the applicant made the false statement are not "public servants" which is an essential element of the offense;

(2) to reject the ALJ's determination to the contrary and find from this record that the applicant committed theft by unlawful taking in violation of N.J.S.A. 2C:20-3, a disorderly persons offense;

(3) to find, upon consideration of all the rehabilitation factors particularly the seriousness and circumstances of the offense including the applicant's duplicitous efforts to conceal her wrongdoing, that the applicant is disqualified pursuant to section 86(c)(2); and

(4) to adopt the ALJ's conclusion that the applicant failed to establish her good character, honesty and integrity, but note that such finding is based upon the seriousness with which a theft from a patron must be viewed, together with the importance which must be placed upon the applicant's willful conduct designed to frustrate the investigation into the theft by casino security personnel.

IT IS FURTHER ORDERED that the renewal application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference;

IT IS FURTHER ORDERED that Doris E. Dunston is prohibited from reapplying for or obtaining 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 the applicant's motion for stay is denied.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9144-88
AGENCY DKT. NO. 88-EA-192

DORIS E. DUNSTON,
Petitioner,
v.
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Doris E. Dunston, petitioner, pro se

Ralph Fusco, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: April 20, 1989 Decided: June 21, 1989

BEFORE **RICHARD J. MURPHY,** ALJ:

STATEMENT OF THE CASE

Doris Dunston (petitioner or applicant) has applied for renewal of her casino employee license (gaming) pursuant to N.J.A.C. 5:12-86, 89, 90 and 107 and the Division of Gaming Enforcement objects on the basis of an incident on April 13, 1985, in which the applicant was alleged to have taken an unspecified amount of money from a patron in the slot machine area of Bally's Park Place Hotel/Casino. Dunston claimed to DGE that she had found the money on the slot machines and had placed it in a locker for safe keeping. Security officers allegedly recovered $63 in $1 tokens. No criminal charges were filed, following the return of tokens to the patron. The Applicant is currently employed at the Claridge.

Hotel/Casino. She requested a hearing on November 16, 1988 and the matter was referred to the Office of Administrative Law on December 16, 1988 for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on April 20, 1989 at which time the record closed. The time for submission of an initial decision was extended until June 22, 1989 for reasons not relevant to this case.

ISSUES

1. Whether the conduct of the Applicant involving the taking of the tokens from a patron in April 1985 renders her licensure inimical to the policies of the Casino Control Act notwithstanding the fact that the act was not prosecuted. See, N.J.S.A. 5:12-86(c)(2),(g);

2. Whether the Applicant can establish by clear and convincing evidence her good character, honesty and integrity as required for licensure under N.J.S.A. 5:12-89(b) as per 5:12-90(b).

FINDINGS OF FACT

Petitioner Doris E. Dunston started working the Casino industry in the summer of 1981, when she got a job as a public area attendant with the United Company, which then had a cleaning contract with Bally's Park Place Hotel and Casino. She subsequently became an "in-house" employee of Bally's in 1982 or 1983 and was considered to be an casino employee working under a license issued by the Casino Control Commission (CCC) (T-8). Her job at Bally's was to clean the slot area, including the quarter, dollar and fifty cent sections. United had no formal policy for disposing of money left behind by patrons, but the company was "relaxed" and Ms. Dunston was under the impression that she could keep what she found in the slots, provided it was not "big money" and the casino was closed or closing (T22 to 23). Ms. Dunston stated that she would, however, have left alone or turned in fifty or one hundred dollars in tokens if patrons were still playing in the area of slot machines where she was working (T24, 7-11). There was no evidence introduced to show that Bally's had any formal policy of "finders-keepers" (T11), or requiring the cleaning staff to turn in such found money.

On April 13, 1985, Petitioner was cleaning the slots on the midnight to 8:00 am shift. At approximately 12:31 p.m. a patron in the "P" [progressive] slot area complained that a public area attendant had taken a cup containing 65 to 70 dollar tokens from behind a fifty cent slot which she was playing. Bally Security was contacted and interviewed the victim, who claimed tht a cleaning woman had approached her, asked if the cup of coins was hers, and then, after being advised that it was, made off with the tokens (unbeknownst to the victim) (R-3). The victim later claimed that $135 in tokens had been taken, but ultimately stated that the cup was only one third full and contained approximately $65 in dollar tokens.

Ms. Dunston, who was working in the "P" slot area at the time, was questioned by Security and, initially, denied in a written statement that she had taken a cup of tokens from the second area of the progressive slots:

> I was cleaning slots in the second progressive slots when I found a pack of cigarettes asking the near lady to them if they were her's. Upon her negative reply I proceeded to clean the area. I came around the quarter slots in the isle where I told the guard Audrey I was going to remove my sweater. Upon return to my section I was told I was accused of taking a cup of money. At no time did I remove any cup from this section (R-1; emphasis added).

Petitioner verbally gave essentially the same statement to Lt. P.K. Smith (R-3), who subsequently checked her locker and found no tokens. At approximately 5:45 a.m. a "confidential source" advised Lt. Smith that Ms. Dunston had indeed taken the coins and had asked a friend to place them in her locker for safekeeping (Ibid). The tokens were located in the locker of the "friend," (Remel Terry) who initially denied any knowledge of them. Lt. Smith again interviewed Ms. Dunston and noted in his report that:

> I then showed her the tokens and informed her that they had been found in Terry's locker. At this point Dunston admitted her involvement. She stated that she had found the tokens unattended and taken them first to the ladies room and them to her locker. After being questioned the first time by him she took a break and asked Terry to hold them for her. Terry then placed them inside of her own locker . . . (R-3 at 2; emphasis added).

Remel Terry, Ms. Dunston's co-worker, later admitted that she had lied to protect the Petitioner (Ibid). Ms. Dunston also provided a second statement:

> This is a true statement resolving Remel Terry of any wrong doing. All she did was help a friend out. I found the money in the slots - there was no one around. I then took the coins to my locker. After being questioned by security I gave them to Mel for safe keeping. This statement void all other previous ones (R-2; emphasis added).

At the hearing, petitioner gave the following account of the incident on April 13, 1985. On that occasion, she was on the midnight shift and was cleaning the "right hand side of the palace" in the slot areas when she found a cup of dollar tokens in the dollar slot section (T9-10). She states that she took the money out of the cup and put it in her pocket and continued to clean the dollar section. Still carrying the tokens, she moved on to the fifty cent section and encountered a woman near a pack of cigarettes in a Bally's cup and inquired as to whether they belonged to the woman and was advised that they did not. She moved on down the row and then determined to remove the sweater which she was wearing and advised the guards that she was going to the bathroom for that purpose. She didn't, at this time, put the tokens in her locker, but transferred them to a bag containing a pair of gloves. When she returned to the floor, she was contacted by Security which stated that a woman had claimed that Petitioner had stolen some of her money. According to Ms. Dunston, the woman was inebriated and could not identify her as the thief; She also did not recognize the woman. After her initial conversation with Security, during which she had the tokens in her possession, the petitioner went to her friend Remel Terry and asked her to put the tokens in her locker for safe keeping. Ms. Dunston's reaction to the allegation of theft was "I said darn, the first time I ever find anything here comes this lady and says that she lost a cup of money" (T-13, 6-8). As far as the Petitioner can remember, the cup did not contain $63 when she found it, and she claims that she mingled the tokens with other coins found by her that evening. Her intention was to cash the tokens in the next day, when the casino reopened. When asked whether she thought the money might have belonged to someone else she answered:

> No, because I would have thought if somebody else had left the money there they would have come back. The first time I went around I left the money there and I came back again and it was still there, so I said well, no one has come back, and it was an empty slot area where I was working at the time (T17, 4-11).

Petitioner claims that the written statement by Lt. P.K. Smith is, in part, a "fabrication" in that she denies that she ever spoke to the woman reporting the theft, because she "couldn't even speak to anyone because the lady was so drunk she was laying all over the floor" (T18, 12-25; T24). Ms. Dunston also claimed that the woman to whom she had spoken to in the fifty cent section was not the woman who reported the theft (T25, 6-15). Petitioner claims that her written statement in exhibit R-1 that she at no time removed a cup of money from the section referred only to the fifty cent section, and not the dollar section, where she found the cup of coins. She claims that her second statement to security (R-2) was intended only to exonerate her friend, Remel Terry, and was not intended to retract or alter her statement (T31-32). In answer to a question as to why she had not put the cup of tokens in her locker, petitioner claimed that she asked her friend Remell Terry to use her locker because she was less busy, but Ms. Dunston also concedes that she knew that security had already been through her locker before she gave the first statement denying that she had found the cup of tokens (T34). She claims that she did not ask Ms. Terry to store the money in order to conceal it from security, but merely because it was more convienent (T34, 21-25). Ms. Dunston also stated that she was basically a very honest person and that "[i] f I had thought that this was this lady's money, I would have given it to her, because that was the way I was raised. I was not trying to mislead you and I didn't misled Bally's security about it. I didn't speak to this lady, I didn't see this lady, I didn't take this lady's money. I am sorry if you feel that I did, but I didn't. I know what is right and wrong" (T-41, 10-18).

Petitioner currently works at the Claridge Hotel and Casino and presented four letters of reference from her current casino supervisors, who all testified that she is an outstanding, reliable employee and honest (A-1-A-5). She also submitted a letter from Mr. David P. Richardson, Jr., a member of the House of Representatives of the Commonwealth of Pennsylvania, attesting to her reputation as a peaceful, law-abiding citizen (A-5). On cross-examintion it was admitted that neither Petitioner's casino supervisors nor her legislature representative, knew the particular details of her termination at Bally's involving the alleged theft of a patron's tokens.

The Division did not present any testimony from the victim of the theft, to whom the money was returned and who declined to press criminal charges. Nor was any

testimony presented by DGE from security officers at Bally's including Lt. P.K. Smith, whose report contains no indication that the victim positively identified the Petitioner as the culprit. Indeed, Lt. Smith noted that the victim was not told from whom the money had been recovered (R-3 at 2).

There is no dispute as to the above facts, except as indicated below. On the basis of the Petitioner's testimony, which is corroborated by Lt. Smith's report, I **FIND** as a matter of fact that the victim of this alleged theft did not positively identify the petitioner as the cleaning person who made off with her cup of tokens. I also note that the "victim" was observed by the Petitioner to be in a state of extreme intoxication, and later inflated the amount of the lost coins to $135. Ms. Dunston does not dispute providing two written statements to security, subject to her explanation as to why she did so.

DISCUSSION AND CONCLUSIONS

(1) Inimicality

The Division argues that the offense of taking $63 in tokens from a patron, even if not prosecuted, indicates that the continued licensure of the applicant would be inimical to the policy of the act and to casino operations pursuant to N.J.S.A. 5:12-86(c)(2)(g). Specifically, the Division argues that Ms. Dunston's conduct was tantamount to a theft offense as proscribed by N.J.S.A. 2C:20-3. Although there is little question that such an offense, if it occurred, would indeed be inimical within the meaning of that section, there is insufficient evidence in this case to conclude that the Petitioner committed theft within the meaning of N.J.S.A. 2C:20-3. In particular, there is no statement from the victim or other evidence identifying Petitioner as the thief. There is no dispute that the Petitioner took a cup of tokens from the slot area, and asked a friend to store it in the friend's locker after Petitioner had given what was, at best, a misleading statement to Security. But the fact that the petitioner acted to conceal the money, after learning that there was a claim of theft is not necessarily inconsistent with her testimony that she found the cup of tokens unattended in the slot area. Bally's policy as to such

"found money" was unclear at best and the petitioner credibly claims that she was still acting under the informal "finders - keepers" practice of the United Company. Under these circumstances, I **CONCLUDE** that the Division has failed to establish the elements of a theft offense under N.J.S.A. 2C:20-3.

Neverltheless petitioner's action in giving a false statement to Bally's Security does constitute an unsworn falsification to authorities in that it was a written false statement which she knew not to be true. N.J.S.A. 2C:28-3(b)(1). I am not persuaded by her claim that her initial statement denying that she took the money was indeed true. Her subsequent admission that she took the money states that "this is a true statement" and is more credible than the first statement of denial given (See, R-1; R-2). I therefore **CONCLUDE** that the applicant committed the offense of submitting an unsowrn falsification to authorities within the meaning of N.J.S.A. 2C:28-3, which is a disorderly persons.

In assessing the claim that Petitioner's continued licensure would be inimical because of this offense, the Casino Control Commission must also consider the factors of rehabilitation as set forth in N.J.S.A. 5:12-90h which have been held to be subsumed within the concept of inimicality. In determining whether rehabilitation has been shown, the Commission must review the following factors:

(1) The nature and duties of the registrant's position applied for;
(2) The nature and seriousness of the offense or conduct;
(3) The circumstances under which the offense or conduct occurred;
(4) The date of the offense or conduct;
(5) The age of the applicant when the offense or conduct was committed;
(6) Whether the offense or conduct was an isolated or repeated incident;
(7) Any social conditions which may have contributed to the offense or conduct;
(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 nature and duties of the position applied for involve general cleaning responsibilities on the casino floor and do not, in the regular course of that job, involve the handling of money or tokens, although it does require some contact with patrons having money in their possession (factor 1). The conduct of submitting an unsworn falsification to Bally's Security employees was serious in that it obstructed or attempted to obstruct an investigation into the alleged theft of a patron's slot tokens. The false statement, which was an isolated and not repeated incident, was given by the Petitioner after being questioned by security officers in connection with an alleged theft and was most likely intended by her to mislead the investigators and to keep the tokens she found, which she had a friend store in her locker (factors 2 to 6 of N.J.S.A. 5:12-90h). (I neglected to determine the applicant's age at the time of the conduct: she now appears to be in her late thirties). She cites no social conditions contributing to the conduct (factor 7). In terms of evidence of rehabiliation, she offers her unblemished work record at the Claridge Hotel and Casino as attested to by her supervisors (factor 8).

On the basis of the petitioner's untarnished work record both before and after this unrepeated incident in 1985, I **CONCLUDE** that her continued licensure would not be inimical within the meaning of N.J.S.A. 5:12-86(c)2, g. While the conduct in submitting a false statement was serious, it was a momentary lapse of judgment by the Petitioner, who intended to keep what apparently she had found on the casino floor. Under these circumstances, and given her otherwise unblemished record, she is not disqualified by the operation of N.J.S.A. 5:12-86c(2). However, she must also establish her good character, honesty and integrity.

(2) Good Faith, Honesty and Integrity

In order to qualify for a casino employee license, an Applicant must "produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity." See, N.J.S.A. 5:12-89b(2) and 90b. The applicant thus must establish good character, honesty and integrity as a matter of fact by clear and convincing evidence and not merely as a matter of reputation, See, Application of Boardwalk Regency Corp. for a Casino License, 90 N.J. 361, 369 (1982), appeal dismissed, 459 U.S. 1081 (1982). Applicants have been

found to lack good character, honesty and integrity as a matter of fact where there was evidence that they have engaged in such nefarious activities as procuring prostitutes for foreign officials engaged in casino regulation or swindling casino patrons by altering dice. See, e.g., Alter v. Div. of Gaming Enforcement, 6 N.J.A.R. 584 (1979); Div. of Gaming Enforcement v. Matta, 5 N.J.A.R. 439 (1983). These examples are not exclusive and each case must be examined on its particular merits.

The requirement that an applicant establish good character, honesty and integrity by clear and convincing evidence is imposed by N.J.S.A. 5:12-90b and goes beyond the Threshadd requirement that an applicant not be disqualified by inimical conduct under N.J.S.A. 5:12-86c(2)g. In this instance, although the petitioner's licensure might not be inimical to the policy of the Act and to casino operations, so as to preclude registration of the petitioner, I **CONCLUDE** that she has failed to establish her good character, honesty and integrity by clear and convincing evidence because of her conduct in submitting unsworn falsification to obstruct an investigation and, in attempting to conceal tokens taken from the casino floor. These actions were intentional, and designed to mislead security officers investigating the alleged theft. While petitioner has shown sufficient rehabilitation to reasonably support a conclusion that she is not statutorily disqualified from registration under the Act, conduct of this kind precludes a finding that she has met the requirements of N.J.S.. 5:12-89(b)(2), 90b. It may be, as the Petitioner claims, that she is basically a very honest person who acted in an innocent manner on April 13, 1985, which is now being misconstrued, but the facts submitted establish that she engaged in conduct to thwart an investigation into a patron's claim of theft and she thus has failed to establish the requisite good character, honesty and integrity for renewal of her casino employee license.

DISPOSITION

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the application of Doris E. Dunston for renewal of her casino employee license is **DENIED.**

This recommended decision may be adopted, 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.

6.21.89
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

6/21/89
DATE

Kimberly Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

6/26/89
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW K.S

ct

WITNESS LIST

For Petitioner

Doris Dunston

LIST OF EXHIBITS

For Petitioner:

P-1 Letter of reference from Joseph Glover, Manager of Environmental Services, Trump's Castle Hotel and Casino, dated June 10, 1988

P-2 Letter of reference from Carol Lewis, Security Officer at the Claridge Hotel and Casino, dated May 30, 1988

P-3 Letter of reference from Patricia Belgrave, Environmental Services Shift Supervisor at the Claridge Hotel and Casino, dated April 19, 1989

P-4 Letter of reference from Nancy Williams, Environmental Services Shift Supervisor at the Claridge Hotel and Casino, dated April 19, 1989

P-5 Letter of reference from David P. Richardson, Jr., from the Pennsylvania House of Representatives, dated June 13, 1988

For Respondent:

R-1 Ms. Dunston's written statement to Bally's

R-2 Ms. Dunston's written statement to Bally's

R-3 Incident report prepared by Bally's, dated April 14, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-398
LICENSE NO. 076397-21
REGISTRATION NO. 078545-40
OAL DOCKET NO. CCC 4783-89
ORDER NO. 90-18-6

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

Complainant,

v.

CHERYL A. EDMUNDS,

Respondent.

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 May 2, 1990,

IT IS on this 10th day of May 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Cheryl A. Edmunds 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4783-89

AGENCY DKT. NO. 89-398

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

v.

CHERYL A. EDMUNDS,
Respondent.

Norma Stancil, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Cheryl A. Edmunds, respondent, pro se

Record Closed: February 9, 1990 Decided: March 22, 1990

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, alleges that respondent Cheryl A. Edmunds committed criminal misconduct which was inimical to the policies of the Casino Control Act (Act) pursuant to section 86c (2) and that respondent lacks the good character, honesty and integrity for licensure in the casino industry. The Division seeks judgment revoking respondent's

casino employee license and casino hotel registration, pursuant to section 129 (1) of the Act.

On June 29, 1989, the matter was transmitted from the Casino Control Commission (Commission) to the Office of Administrative Law (OAL) 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 28, 1989 followed by a Prehearing Order, dated October 3, 1989. A hearing was held on January 8, 1990 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record was held open to allow the Division to respond to the evidence offered by respondent which she failed to provide to the Division in discovery. The Division response was received by the undersigned on February 9, 1990, which constitutes the closing of the hearing record.

ISSUES

The issues to be determined by this tribunal and as agreed to by the parties at the prehearing conference are these:

A. Whether respondent's continued licensure and registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c (2) because she is alleged to have committed a violation of N.J.S.A. 2C:20-3, Theft by Unlawful Taking?

B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b (2)?

UNCONTESTED FACTS

Based upon respondent's testimony and the documents moved into evidence by the Division, the following facts are neither contested nor in dispute. Accordingly, the following uncontested facts are hereby adopted, by reference, as my **FINDINGS** of **FACT** in this matter:

Respondent, who was 23 years of age at the time of hearing, is the holder of casino hotel employee registration no. 78545-40 and casino employee license no. 76397-21. On or about April 3, 1989, respondent was employed by TropWorld

Casino and Entertainment Resort as a slot attendant under her casino employee license. On this date, respondent was the subject of a surveillance by the TropWorld Surveillance Department where, at approximately 8:00 p.m., respondent was observed to enter a 50 cent slot machine that had a $10 payout on it and place in excess of $40 in 50 cent tokens in an unknown patrons coin cup. Detective Hungridge of the New Jersey State Police (NJSP) attempted to question respondent about the surveillance observations, however, she had ended her work shift and departed the casino for the day (P-1).

Subsequently, on April 9 and 10, 1989, respondent was again the subject of a surveillance and thereafter she was questioned by Detective Hungridge. In his Supplementary Investigation Report dated April 10, 1989, Detective Hungridge stated the following:

> On this date the undersigned observed Cheryl Edmunds meet with the same unknown W/F patron that Edmunds paid the 50 cent tokens to on the previous night. The undersigned went to the Casino floor to question both Edmunds and the unk. patron. The patron had already departed the Casino. Edmunds was taken to the TropWorld D.G.E. Office where she was read her Miranda Rights and questioned by the undersigned.
>
> Edmunds admitted that she did in fact pay out at least $60.00 in 50 cent tokens to the W/F patron who according to Edmunds she did not know her name or where she lived. Edmund claimed that she only knew the patron by her coming to TropWorld. Edmunds stated that the patron gave her a $20.00 tip.
>
> Edmunds further admitted that she had been giving this same patron and another unknown B/F patron slot tokens for the past four months. Edmunds stated that she had received tips ranging as high as $50.00 from the two patrons in return for the free tokens.
>
> The TropWorld surveillance dept. observed Edmunds receiving a package from another unknown patron on the previous night. (4-9-89) Edmunds admitted that she received a gift for her son and from a Mr. & Mrs. Mayo that night. Edmunds stated that she only knows Mr. & Mrs. Mayo and the other two patrons from them coming into the casino. Edmunds stated that she has never paid any tokens to the Mayo's.

The undersigned signed Complaint Summons #S311128 against Edmunds for Theft By Unlawful Taking. Case pending Court. (P-1).

As a consequence of Detective Hungridge's investigation, respondent was placed under arrest and charged with Theft by Unlawful Taking, a N.J.S.A. 2C:20-3 offense. Respondent was terminated from her employment position with TropWorld on or about April 10, 1989. On May 26, 1989, respondent appeared before the Atlantic City Municipal Court where she was adjudged to be guilty of the N.J.S.A. 2C:20-3 offense. Respondent was fined $75, with $25 in court costs assessed against her and she was penalized $30 to the Violent Crimes Compensation Board.

Respondent readily admits to the violation asserting, on the record, that she committed this offense on at least eight or ten occasions. She testified that she would deliver coins from the slot machines to approximately seven different individuals. She could not estimate the loss TropWorld suffered as a result of her activities.

On May 31, 1989, the Division filed a complaint with the Commission wherein it requested, among other things, the suspension of respondent's registration and license. On June 22, 1989, the Commission entered an order suspending respondent's casino employee license and casino hotel employee registration, pending the final disposition of the Division's complaint.

On September 5, 1989, respondent was arrested with a companion, Andrea C. Toney, in the Showboat Hotel and Casino by the N.J.S.P. as a consequence of the Showboat's surveillance department observations of the two women on the casino floor. Respondent admits that she acted as a look-out for Ms. Toney while Ms. Toney took a purse out of an open pocketbook held by a Showboat patron, Ms. Glady M. Cifelli. Respondent also admits that it was she who identified and pointed out the open pocketbook to Ms. Toney.

On September 5, 1989, Detective Harold R. Vliet of the N.J.S.P. filed complaints against both women and charged them both with violations of N.J.S.A. 2C:5-2, Conspiracy and N.J.S.A. 2C:20-3, Theft. Thereafter, the Atlantic County Grand Jury handed up a true bill alleging that respondent and Andrea C. Toney had committed the N.J.S.A. 2C:20-3 offense and that they both were liable for the

conduct of the other, pursuant to N.J.S.A. 2C:2-6. There was no reported disposition of this matter at the time of the herein hearing.

DISCUSSION AND CONCLUSION

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 respondent Edmund's alleged violation of N.J.S.A. 2C:20-3 constitutes a violation of section 86c (2) and that, accordingly, her license and registration should be revoked.

Disqualifying Offense Under Section 86c (2) of the Act

Section 86c (2)of the Act is commonly referred to as the "inimical clause." In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License (Resorts), Casino Control Commission No. 79-CL-1 (February 26, 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 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 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.

In the enabling legislation authorizing casino gaming, the Legislature set forth specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. Specifically, section 1b (6) of the Act states:

> 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.

Our Supreme Court emphasized the significance of strict regulation of all phases of the casino industry in Knight v. Margate, 86 N.J. 374, 381 (1981), where it said:

> 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. 5:12-1b(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."

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, (N.J. App. Div., July 11, 1985, A993-82T5, A-317-84T5, A-525-84T5, A-880-84T5) (unreported at 17) 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.

The Division contends that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-3; theft, which under the circumstances renders continued licensure and registration to be inimical to the Act.

N.J.S.A. 2C:20-3a defines the crime of theft as follows:

> A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

In the matter of Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 at 313, the Commission quoted from Resorts and the criteria for determination as to

whether an offense is inimical to the Act. The Commission continued to hold in Davis that rehabilitation under sections 90h and 91d of the Act do not apply to disqualifying convictions under section 86c (4) (now section 86c (2)). However, many of the factors of these two sections of the Act are to be considered within the inimical analysis. Those enumerated factors in section 90h, which apply to a claim of rehabilitation by a casino employee license applicant, are as follows:

> (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 (licensee) 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 recommendation of persons who have or have had the applicant under their supervision.

First, respondent is the holder of a casino hotel employee registration no. 78545-40 and casino employee license no. 76397-21. Respondent was employed by TropWorld as a slot attendant where, the record demonstrates, she had frequent and direct contact with casino patrons. As a consequence of a complaint filed with the Atlantic City Municipal Court, respondent was terminated from her position by TropWorld on or about April 10, 1989. Respondent seeks to retain her casino employee license as well as her casino hotel employee registration.

Second. Theft is a serious offense. Although the total amounts to have been taken by respondent are uncertain, the fact remains that she committed the offense

against her employer. Respondent had a duty to protect the interests of her employer, TropWorld. Instead, she violated that duty and the trust bestowed upon her when she opened a slot machine to make a payout to a patron which exceeded the amount of the payout due to the patron.

Third, fourth and fifth. The offenses were observed on April 3, 9 and 10, 1989, when respondent was 22 years of age. The misconduct occurred when a patron would win on a slot machine and the slot machine failed to make the proper payout. Respondent would then open the malfunctioning machine in order to make the payout to the patron. If, for example, the win was $10, respondent would make a payout to the patron of $40-$60. Respondent also admitted that she was in receipt of "tips" from patrons from time to time when the patron "hit something." (TR. 15).

Sixth. Respondent was observed by TropWorld surveillance on three occasions and she admits to between eight and ten occasions when she committed the act of theft against TropWorld. The record demonstrates, therefore, that respondent's conduct was not an isolated event but, rather, repeated violations over a period of time.

Respondent's subsequent arrest on September 5, 1989, in the Showboat with Ms. Toney demonstrates a total disregard for the property rights of others. In this instance, respondent not only conspired to act as the look-out for an illegal activity but, in addition, she pointed out the potential victim. This conduct, coupled with events in April 1989, demonstrate respondent's penchant for repeated criminal activity and may not be condoned.

Seventh. There were no social conditions extant which contributed to respondent's conduct with regard to any of the offenses.

Eighth. Respondent provided no evidence of rehabilitation or efforts to be rehabilitated.

Having carefully considered the entire record before me, I **CONCLUDE** that the Division has carried its burden of proof, by a preponderance of the reliable and credible evidence. It has demonstrated that respondent's conduct of committing at least one N.J.S.A. 2C:20-3 offense is inimical to the policies of the Act and, thus, to the gaming industry. I further **CONCLUDE** that such conduct disqualifies respondent

from holding a casino employee license and a casino hotel employee registration, pursuant to N.J.S.A. 5:12-86c (2).

Good Character, Honesty and Integrity as Required by Section 89b(2) of the Act.

Pursuant to N.J.S.A. 5:12-89b(2), respondent is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra, In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that respondent possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Respondent produced a series of five documents addressed to "To Whom it May Concern." Three of the five letters, although complementary, make no reference to respondent's conduct at TropWorld or the reasons for her termination. Nor do these three letters address respondent's conduct on September 5, 1989 at the Showboat. Two of the five letters allude to some difficulty respondent may have had in the past, however, there is nothing specific with respect to her conduct or the events at TropWorld or the Showboat.

Respondent offered a neighbor, Steven Edwards, who testified on her behalf. He asserted, among other things, that respondent was a follower rather than a leader and she had to stop following bad people; i.e., people who went to steal. Mr. Evans admitted on the record that he was aware of the incidents of theft which occurred at TropWorld, however, he was not aware of the event which involved the taking of a pocketbook at the Showboat until he heard about it from respondent just before the hearing.

Considering all of the circumstances regarding this issue, I **CONCLUDE** that respondent has failed to meet her burden of proof to demonstrate, by clear and convincing evidence, that she possesses the requisite good character, honesty and integrity for continued licensure in the casino industry.

I **CONCLUDE**, therefore, that respondent is disqualified from continued licensure by virtue of her failure to affirmatively establish her good character, honesty and integrity as required by N.J.S.A. 5:12-89b (2).

ORDER

Accordingly, it is hereby **ORDERED** that the casino hotel registration no. 78545-40 and the casino employee license no. 76397-21 issued to and held by Cheryl A. Edmunds be and are hereby **REVOKED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

22 March 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 2 1 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Cheryl A. Edmunds

For the Respondent:

Cheryl A. Edmunds
Steven Evans

EXHIBIT LIST

For the Petitioner:

P-1 New Jersey State Police investigation report
P-2 Complaint, dated April 3, 1989
P-3 New Jersey State Police investigation report
P-4 Indictment No. 89-11-3272-A-CP
P-5 Complaint of Defendant Cheryl A. Edmunds, dated September 5, 1989
P-6 Complaint of Defendant Andrea C. Toney, dated September 5, 1989
P-7 Showboat incident report

For the Respondent:

R-1 Letter of recommendation from Marian Holmes
R-2 Letter of recommendation from Tina L. Evans
R-3 Letter of recommendation from Rodney Smith
R-4 Letter of recommendation from Marlene Santos, dated December 5, 1989
R-5 Letter of recommendation from Carol B. Bennett

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-157; 88-375
APPLICATION NO. 66902-22
REGISTRATION NO. 66310-40
OAL DOCKET NO. CCC 04106-88; 03691-88
ORDER NO. 90-8-9

APPLICATION OF LUIS A. ESTRADA
FOR A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

v.

LUIS A. ESTRADA,

Respondent.

ORDER

A hearing 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 February 21, 1990,

IT IS on this 26th day of February 1990, ORDERED that the initial decision is modified as follows:

> The same factors which preclude a finding of rehabilitation for casino employee licensure do so for casino hotel employee registration as well.

ORDER NO. 90-8-9

IT IS FURTHER ORDERED that the application is denied and the registration is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Luis A. Estrada is prohibited from reapplying for or obtaining 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 4106-88
AND CCC 3691-88
AGENCY DKT. NOS. 88-375 and 88-EA-157
(CONSOLIDATED)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
LUIS ANTONIO ESTRADA,
Respondent,
and,
APPLICATION OF LUIS
ANTONIO ESTRADA FOR A
CASINO EMPLOYEE LICENSE.

Nancy Scharff, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Luis Antonio Estrada, respondent, pro se

Record Closed: November 21, 1989 Decided: January 12, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

PROCEDURAL HISTORY

On January 25, 1988, the Division of Gaming Enforcement prepared a letter to the Casino Control Commission (Commission) recommending that the Commission deny the application of Estrada for a non-gaming, maintenance and cleaning, casino employee license.

On May 26, 1988, the Division filed a complaint against Estrada with the Commission seeking revocation of Estrada's casino hotel registration.

Estrada requested a hearing in both matters.

After several postponements at the request of Estrada, the matters were tried to a conclusion on October 19, 1989, although the record was held open until November 21, 1989, in order to permit the Division to inquire into the bona fides of certain letters which Estrada offered in evidence but had not supplied to the Division in pretrial discovery. The undersigned requested, and was granted, an extension in which to file this initial decision.

STATEMENT OF THE CASE AND ISSUES PRESENTED FOR DETERMINATION

The Division alleged that Estrada was convicted of aggravated assault contrary to N.J.S.A. 2C:12-1b(1), a crime of the second degree. This crime is one of the crimes enumerated in the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq. at section 86c 1. Any person convicted of one of the enumerated crimes is disqualified from casino employee licensure and casino hotel employee registration. N.J.S.A. 5:12-90e and 91b.

No person shall be disqualified as a result of such a conviction, however, if that person can affirmatively demonstrate rehabilitation. N.J.S.A. 5:12-90h and 91d. A further qualification for casino employee licensure, but not for casino hotel

registration, is possession by the applicant or licensee of good character, honesty and integrity. N.J.S.A. 5:12-89b(2) and 90b.

FACTUAL DISCUSSION

The State proved, and Estrada admitted, that he was convicted of aggravated assault. Estrada also explained the circumstances of his offense. He said that a petty thief who lived in Estrada's apartment complex burglarized Estrada's cousin's apartment. The thief stole her welfare money. The thief was discovered and confronted by relatives of Estrada and of the cousin. Someone at the scene had a baseball bat which Estrada used as a wedge, he claimed, to try to keep the thief from closing his apartment door. The police arrived. The thief ran. Someone (not the police) shot him. Estrada and other relatives chased the thief and beat him. The thief had a knife. Estrada kicked him.

Arthur V. Guerrera, J.S.C., presided at Estrada's criminal trial. Consequently, he was in the best position to evaluate the testimony of the police, actors, victims and bystanders who witnessed or participated in the events of November 7, 1986, in Egg Harbor City, which resulted in Estrada's arrest and conviction. Guerrera wrote in his sentencing report that there was a "tumultuous riot." In his reasons for sentencing Estrada to seven years on the aggravated assault charge, Guerrera said:

> "40-50 people were involved, many of them with sticks and bats. A gun was also used, however, none of the defendants were convicted of the actual shooting of the victim, probably because the identity of the shooter was weak. During this time the mob was rampaging through the apartment complex and those that were convicted were seen pounding on the apartment where the victim was located. The police were called and because of the magnitude of the riot, other police departments were called.
>
> The victim, after the police arrived, ran from the apartment and was chased. During the chase, he was shot two times. When he fell to the ground the mob set upon him with baseball bats and sticks.
>
> With the aforementioned facts in mind, a long prison sentence must be imposed to deter this defendant and others from violating the law...."

Guerrera sentenced Estrada to seven years in the New Jersey State Prison. Six other counts in the indictment, of which Estrada was also found guilty, were either merged with the aggravated assault or sentenced concurrently with the seven years, except for VCCB penalties which totaled $210.00.

Estrada was eventually imprisoned at the Mountainview Youth Correctional Facility. While there he was elected by his cottage as a representative to the Hispanic Community Group. He provided assistance to new Hispanic inmates. He attended classes with teacher Nancy Gehr and very favorably impressed her with his respectful and cooperative demeanor. He attended drug and alcohol counselling and received a certificate. He was thereafter assigned to a prerelease program conducted by the Volunteers of America (VOA).

Participants in the VOA program must design and fulfill a personal contract. Estrada's case manager L.H. Lacock, writes that Estrada:

> "conscientiously followed all the rules and regulations. He met all of his financial obligations. He was an exemplary client.... He was always polite and courteous. He demonstrated ... that he is ready to return to his community as a law abiding productive citizen."

While at the VOA, Estrada was employed in the Trenton Warehouse, apparently a repository of clothing and furniture for institutional use.

Estrada has been employed as a finisher of concrete; floors, footings, sidewalks, etc. His employer Ed Dennis, a mason, writes that Estrada has worked for him for three years, gets along with other employees and accepts responsibility. He commented favorably on Estrada's character and trustworthiness.

Estrada has two small blemishes on his record in addition to the criminal conviction. He was convicted of possession of a small amount of marijuana, a disorderly persons offense, in 1985. Also in 1985, he was charged with burglary. The burglary charge was downgraded to "defiant trespass." He was found not guilty on that charge. He explained that this was a domestic dispute with the father of his sister's children who refused to pay support.

DISQUALIFICATION

I **FIND** that Estrada was convicted of a second degree aggravated assault contrary to N.J.S.A. 2C:12-1b(1).

I **CONCLUDE** that Estrada is disqualified from casino employee licensure and casino hotel registration pursuant to N.J.S.A. 5:12-86c 1, 90e and 91b unless he is saved from disqualification by affirmatively demonstrating his rehabilitation.

REHABILITATION

The Act provides that persons who are disqualified from casino employee licensure and hotel registration pursuant to section 86c 1 may still be licensed or registered provided they can affirmatively demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90 and 91d. These rehabilitation statutes require the Commission to examine the applicants conduct in light of the following criteria: (1) The nature and duties of the position, (2) The nature and seriousness of the offense or conduct; (3) The circumstances under which the offense or conduct occurred; (4) The date of the offense or conduct; (5) The age of the applicant when the offense or conduct was committed; (6) Whether the offense or conduct was an isolated or repeated incident; (7) Any social conditions which may have contributed to the offense or conduct; (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.

Pursuant to the requirements of N.J.S.A. 5:12-90h and 91d, I **FIND**:

1. The applicant has applied for a non-gaming casino employee license in order to perform maintenance and cleaning on the floor of the casino. He is registered as a casino hotel employee and has worked in the past as a waiter in a hotel restaurant and as a heavy duty porter. He has approximately six months experience in each job. He would prefer employment as a heavy duty porter or as a cleaner, rather than as a waiter. As a licensee, he would have contact with casino patrons while they gambled. As a registrant, his contact with patrons would be

limited to the hotel area. He would have fewer contacts with patrons as a heavy duty porter than as a waiter.

2. The offense of aggravated assault is very serious; it is a second degree offense and it was treated seriously by the court.

3. The victim in this case was a known thief who stole the proceeds of Estrada's cousin's welfare check. Estrada and other residents of the apartment complex in which the theft occurred administered what is often described as "street justice." Judge Guerrera described the event as a "riot." The deputy attorney general described the action as "vigilantism." All three descriptions will appear more or less apt, depending upon the point of view, and the frequency of burglary and theft in the reader's neighborhood.

4. The offense occurred on November 7, 1986.

5. Estrada was 22 years old at the time.

6. Estrada has no other criminal convictions.

7. This pro se applicant/respondent did not offer any evidence that social conditions contributed to the offense.

8. Estrada exhibited good conduct in prison and in the community after his release to the VOA. He received drug and alcohol counseling. He took additional academic courses in prison. He participated in work release at the VOA. He has been recommended by persons who have supervised him. He is still on parole.

There is no formula by which these eight factors can be weighed. Although the questions are practically identical for both licensees and registrants, the same facts in some cases may show rehabilitation for a registrant, but not for a licensee This is because the answer to the first question; i.e., the nature of the position, always relates in some fashion to the contact an applicant has with casino patrons who are one of the protected classes under the Act. The other protected class is the general citizenry whose expectations of the casino industry must be met. It is unlikely that these expectations would include hiring parolee's for employment on

the casino floor. However, the hiring of parolee's for heavy porter work at hotels would not raise the eyebrows of anyone who has any occasion at all to think about the concept of rehabilitation and its requirement of honest employment. The major requirement of heavy porters, like scullery men, is the ability to labor and toil. The average citizen expects parolees to perform such labors.

Another consideration is the degree of approbation attached to the particular conduct. Persons who maliciously assault children, or young mothers, or senior citizens are to be despised. Despicable too are bullies and muggers. None of these descriptions quite fit Estrada's crime. The "victim" in this case was a known thief who must have vexed the apartment's residents. There was no greed or other profit motive attached to the crime. There was only strong provocation. The mob, comprised mostly of Estrada's relatives, sought to recover their cousin's welfare money, and teach the burglar a lesson. Like all mobs, it raged out of control. That is why vigilantes are not excepted from the proscription of the law. That is why Judge Guerrera imposed the presumptive sentence for aggravated assault. But Estrada has not shown a predisposition to commit the evils which bring regulated casino gambling into disrepute such as theft or other fraudulent conduct. He also appears not to have a drug problem. He impressed me at the hearing with his friendly and respectful demeanor as he impressed his teacher Nancy Gehr and his case manager L.H. Lacock, both of whom had more of an opportunity to observe Estrada than I did.

I **CONCLUDE** that Estrada has established by clear and convincing evidence that he is rehabilitated from his conviction for aggravated assault pursuant to N.J.S.A. 5:12-91d. He may retain his registration.

I also **CONCLUDE** that Estrada has failed to establish by clear and convincing evidence that he is rehabilitated from his crime of aggravated assault pursuant to N.J.S.A. 5:12-90h. He may not be licensed.

GOOD CHARACTER, HONESTY AND INTEGRITY

Estrada is still on parole. The status of parolee is inconsistent with the status of a person possessing good character, honesty and integrity. This is more apparent when the burden of proof on this issue is upon the applicant by clear and convincing

evidence. N.J.S.A. 5:12-89b 2 and 90b. Estrada failed to provide clear and convincing evidence that he possesses the required attributes.

I therefore **CONCLUDE** that Estrada has failed to establish by clear and convincing evidence that he possesses the good character, honesty and integrity required by N.J.S.A. 5:12-89b 2 and 90b.

It is **ORDERED** that the complaint seeking revocation of Estrada's casino hotel registration be **DISMISSED.**

It is further **ORDERED** that Estrada's application for a casino employee license be DENIED.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 12, 1990
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

1/15/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 18 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

None.

EXHIBIT LIST

For the Petitioner:

P-1 Atlantic County Indictment
P-2 Certified Copy for an Order for Commitment
P-3 Egg Harbor City Police Reports Pertaining to November 7, 1986 Incident
P-4 Egg Harbor City Police Reports Pertaining to July 13, 1985 Arrest
P-5 Egg Harbor City Police Reports Pertaining to October 4, 1985 Arrest
P-6 PHD 2A
P-7 Investigative Reports Prepared by the Division of Gaming Enforcement, dated January 9, 1987 and April 7, 1987

For the Respondent:

R-1 Letter, dated July 24, 1989, from Nancy Gehr
R-2 Letter, dated August 16, 1989, from Rosa Estrada
R-3 Letter, dated August 1, 1989, from Edward D. Dennis
R-4 Letter, dated July 6, 1989, from L.H. Lacock, Volunteers of America

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-155
REGISTRATION NO. 80214-40
OAL DOCKET NO. CCC 3148-89
ORDER NO. 90-4-14

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

Complainant,

v.

ROSEMARIE GIBSON,

Respondent.

ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of January 24, 1990,

IT IS on this 30th day of April 1990, ORDERED that the initial decision is modified as follows:

For the reasons stated more fully on the record, the Commission rejects the ALJ's recommendation that the respondent be found rehabilitated pursuant to N.J.S.A. 5:12-91(d). Instead the Commission finds that the respondent has failed to present clear and convincing evidence of her rehabilitation from the disqualifying

convictions in 1982 of possession of methamphetamine with intent to distribute and 1986 for theft by deception.

However, the respondent's substantial evidence of rehabilitation, although not sufficient for purposes of 91(d), does warrant further consideration N.J.S.A. 5:12-91(e). Considering the respondent's satisfactory employment record in the casino industry since 1987, her minimal contact with casino patrons or casino operations, her favorable letters of reference and her law abiding life since her last conviction, together with her personal circumstances in which she provides the sole support for her two minor children, the disqualification is waived pursuant to section 91(e) to permit her to retain her casino hotel employee registration.

IT IT FURTHER ORDERED that Rosemarie Gibson is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

evidence, specifically considering the recency of the offense, the repeated number of times that Mr. Nocera compromised his employment by procuring complimentary credits and the absence of any affirmative evidence such as witnesses or references, and I would also note that I find it significant that he did this in his capacity as a security officer.

Thirdly, I would find in light of the absence of rehabilitation evidence Mr. Nocera has failed to demonstrate his good character, honesty and integrity and, finally, I would move to revoke Mr. Nocera's casino employee license.

Is there a second?

COMMISSIONER WATERS: Second.

ACTING CHAIR ARMSTRONG: The motion has been made and seconded.

Any comment or discussion?

On the motion as made and seconded, those in favor?

The motion carries unanimously.

(All Commissioners present voted in favor of the motion)

MR. NANCE: Item No. 14, "Decision in complaint against Rosemarie Gibson."

Mr. Daly.

Item No. 14

MR. DALY: I believe Miss Gibson i present. If so, please approach the table.

Commissioners, you will recall this item was presented previously. It concerns an initial decision filed by ALJ Steven L. Carnes on December 4, 1989 in which he recommended that the Division's complaint for revocation of Miss Gibson's casino hotel employee registration be dismissed. The judge had essentially found that the respondent had demonstrated her rehabilitation from two disqualifying convictions, one in 1982, the other in 1986.

The Division of Gaming Enforcement has filed exceptions to that ruling. Arguments concerning those exceptions and the ALJ's recommendation were presented to the Commission as the meeting of January 10. At the conclusion the Commission's consideration of this item the matter was adjourned to allow the Commission to deliberate on the issue of waiver which was raised by the Acting Chair.

It's now appropriate for final disposition. I don't know if there is any particular need for further comments from the parties. I will leave that to the Chair.

ACTING CHAIR ARMSTRONG: I think that this matter was argued completely when it was last

Item No. 14

addressed.

Miss Gibson, you realize you are here today to get a decision on the status of your registration?

I would note that this matter was deferred from the public meeting of January 10, 1990 for consideration of whether this Commission should waive Miss Gibson's disqualification pursuant to Section 91 (e) of the Casino Control Act, which, if that takes place, it would permit Miss Gibson to retain her casino hotel employee registration.

To refresh everyone's recollection, the Division of Gaming Enforcement had filed exceptions to the initial decision of the Administrative Law Judge, Steven Carnes, in which Judge Carnes found that Miss Gibson had demonstrated her rehabilitation from disqualifying offenses in 1982 for possession of methamphetamine with intent to distribute, and in 1986 for theft by deception, and he had recommended dismissal of the Division's complaint for revocation of her casino hotel employee registration. When a motion to reject that initial decision failed, the Commission carried the case to consider the 91 (e) waiver issue which I specifically raised at that time.

Item No. 14

Section 91 (e) provides that the Commission may waive disqualification of a casino hotel employee registrant consistent with the public policy of the Act and upon a finding that the interests of justice so require. The Commission has recognized that waiver is an extraordinary remedy which should be sparingly granted only after a fact sensitive analysis of the record under review has been made.

The Commission utilizes a totality of the circumstances approach to waiver cases. For guidance and structure we look to the eight so-called rehabilitation factors contained in Section 91 (d) of the Act. These and any other relevant circumstances, not only of the offense, but also of the offender, are considered to determine whether waiver of a disqualification is in the interest of justice. A careful application of this analysis is designed to yield a result which is consistent with the policies of the Act.

While I do not concur with the administrative law judge's assessment of the rehabilitative factors to the extent that would support a finding that Miss Gibson has affirmatively demonstrated her rehabilitation, I am nevertheless

Item No. 14

convinced that this is an appropriate case for a Section 91 (e) waiver.

Miss Gibson has been employed as a housekeeper at Showboat since December 1987. As revealed by two letters in evidence, Miss Gibson's employment has been satisfactory. As a housekeeper, she has minimal contact with casino patrons and no involvement with casino operations.

That the offenses here are serious is manifested by their inclusion within Section 86 (c) (1) as automatic disqualifiers. Moreover, the 1982 offense is of special concern because of the inherent and well known evils of illegal drugs, both to society in general and the casino industry in particular. The 1986 theft offense is also a grave matter for regulatory purposes because of the obvious concern for honesty and integrity on the part of those to whom the privilege and attendant obligations of employment in the total industry is extended. Nevertheless, the circumstances of each of Miss Gibson's offenses must be carefully scrutinized. Although the conviction was for possession of CDS with intent to distribute, the record establishes that the offense actually involved the distribution of a small quantity of methamphetamine to her husband who was then confined

Item No. 14

in jail. While the administrative law judge appears to have accepted Miss Gibson's testimony to the effect that she was unaware of the presence of the illegal substance within the magazine that she passed to her husband, I am precluded by law, we are precluded by law, from crediting this testimony because it is fatally inconsistent with her guilty plea in conviction of the underlying offense in Superior Court. Quite simply, the principle of res judicata applies.

Nevertheless, a thorough examination of the record reveals that Miss Gibson is not in 1982, and certainly is not in 1990, one who regularly trafficked in drugs, either as a distributor or user. Rather, on one isolated occasion she acquiesced to her incarcerated husband's request to pass him a controlled substance. The theft offense, however, is of greater concern to me primarily because it is a relatively recent occurrence and there are fewer mitigating circumstances. In fact, I find none. Presented with an opportunity to obtain unlawfully and by stealth the credit card belonging to her employer, she seized the moment and proceeded on a spending spree at the local mall where she charged approximately $2,000 worth of consumer goods for

Item No. 14

herself and her children. Limited means, even poverty, cannot excuse thievery. Miss Gibson was a mature woman at the time of both offenses and there were no pertinent social conditions. As to the theft offense, only the absence of any similar unlawful conduct either before or since the passage of nearly four years time and her gainful satisfactory employment in the industry in the intervening years are rehabilitative factors which weigh in her favor. These are insufficient to instill in the firm belief or conviction that Miss Gibson is truly rehabilitated within the meeting of Section 91 (d).

Nevertheless, upon consideration of these same factors and considering further that Miss Gibson provides the sole support for her two minor children, I am convinced that her continued employment as a housekeeper does not present an appreciable threat to the public policies of the Act and the interests of justice are further waived by waiving her disqualification under Section 91 (e).

I would, therefore, move to modify the initial decision, find that Miss Gibson has failed to demonstrate her rehabilitation by clear and convincing evidence, but waive disqualification for the reasons stated thereby permitting Miss Gibson to

Item No. 14

retain her casino hotel employee registration.

Is there a second?

COMMISSIONER BURDGE: Second.

ACTING CHAIR ARMSTRONG: Any comment or discussion?

COMMISSIONER WATERS: Yes, Madam Chair, I think this is one of those cases where I am in complete agreement. As you have indicated in your motion, there were two criminal offenses committed here. The individual involved is not rehabilitated which leaves the question that you raised as to the interest of justice and furtherance of public policies of the Act. I have heard nothing in the motion that would explain how the interest of justice are furthered by permitting this person to stay in the industry. I recognize the Commission has said earlier that this is a term that is hard to define but I can think of instances that occurred in the past where interests of justice were furthered by reason of the 91 (e) waiver. This is not one of those. Contrary to the view expressed that this individual presented doesn't present an appreciable threat to the public policies of the Act, I think you would have to find to the contrary, that at least two of the public policies involved there are to keep out of the industry those

people with criminal backgrounds who have not been rehabilitated and, secondly, the matter of the safety of the patrons and their property. I notice that we are still making a distinction between a casino hotel--in a casino hotel complex between a casino side and a hotel side. I guess I fail to be able to do that.

It seems to me that a thief who has access to all the hotel rooms in the hotel constitutes a present danger to at least property of those individuals who are residing in the hotel.

It reminds me of the effort that have been made to convince us that a security guard with a criminal background should be permitted to work on the hotel side but not the casino side. Again, I think I would hesitate to want to have a member of my family staying in a hotel where I know an unrehabilitated thief is working or other criminal who hasn't been rehabilitated.

Therefore, I won't support the motion to grant the waiver.

ACTING CHAIR ARMSTRONG: Thank you, Commissioner Waters.

Any further comment or discussion?

If not, all those in favor?

Those opposed?

The motion carries four to one.

(Acting Chair Armstrong and Commissioners Burdge, Dodd and Hurley voted in favor of the motion)

(Commissioner Waters dissented)

ACTING CHAIR ARMSTRONG: Miss Gibson, so there is no misunderstanding, you are being permitted to retain your casino hotel employee registration.

MR. NANCE: Item No. 15, "Application of Robert S. Montgomery."

Mr. Burcat.

MR. BURCAT: Commissioners, on December 19, 1989 Administrative Law Judge Edgar Holmes filed an initial decision recommending that the Commission grant the renewal application of Robert Montgomery for a casino employee license.

The Division filed exceptions to the initial decision.

Mr. Becker is here for Mr. Montgomery and Mr. Armstrong is here for the Division.

ACTING CHAIR ARMSTRONG: Good morning, again, Commissioners. James Armstrong for the Division of Gaming Enforcement.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3148-89
AGENCY DKT. NO. 89-155

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ROSEMARIE GIBSON,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Rosemarie Gibson, the respondent, *pro se*

Record Closed: November 14, 1989 Decided: November 30, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Rosemarie Gibson's casino hotel employee registration no. 80214-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had been convicted of two disqualifying offenses under section 86c(1), and therefore she is disqualified from registration, pursuant to section 91b. The respondent contended that she was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so she could be employed as a housekeeper at the Showboat Hotel and Casino. By complaint to the Commission, filed December 6, 1988, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted in 1982, of possession of a controlled dangerous substance (methamphetamine) with the intent to distribute, in violation of N.J.S.A. 24:21-19a(1), which is the predecessor statute of N.J.S.A. 2C:35-5, and had been convicted in 1986 of theft by deception, in violation of N.J.S.A. 2C:20-4, and forgery, in violation of N.J.S.A. 2C:21-1, which are disqualifying offenses under section 86c(1). Based upon the complaint, the Commission notified the respondent on December 15, 1988, that she had the right to a hearing, and that failure to respond within 15 days could result in her registration being revoked. By application dated April 19, 1989, a hearing. On April 21, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on April 28, 1989, 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 in the matter was held before Administrative Law Judge Edgar R. Holmes on July 28, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether the respondent was convicted of a crime listed as a statutory disqualifier, in N.J.S.A. 5:12-86c to wit: N.J.S.A. 24:21-19a1, possession of a controlled dangerous substance with intent to distribute, which is analogous to N.J.S.A. 2C:35-5.

B. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 2C:20-4, theft over $500., in the third degree.

C. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

A hearing was held on November 14, 1989, in the Municipal Courtroom, Egg Harbor Township Municipal Building, Bargaintown, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On June 12, 1982, the respondent visited her then husband who was incarcerated in the Atlantic County jail. Her husband indicated that a girlfriend of another inmate had an extra T.V. Guide, and he asked the respondent to get it for him. The respondent obtained the T.V. Guide and attempted to pass it to her husband. The magazine was found to contain methamphetamine and marijuana, and the respondent was arrested.

On July 20, 1982, the respondent was indicted by the Atlantic County Grand Jury in Indictment No. 7-64-82, and she was charged with one count of possession of a controlled dangerous substance (methamphetamine), in violation of N.J.S.A. 24:21-20a(1), and two counts of possession of a controlled dangerous substance (methamphetamine and marijuana) with the intent to distribute, in violation of N.J.S.A. 24:21-19a(1) (P-1). On August 2, 1982, the respondent entered a plea of not guilty to the charges; however, on September 13, 1982, she retracted her plea of not guilty and entered a plea of guilty to count two of the indictment, possession of a controlled dangerous substance (methamphetamine) with the intent to distribute. The respondent was convicted in the Superior Court, Atlantic County, on October 8, 1982, and she was sentenced to be incarcerated for 30 days in the county jail and was ordered to pay a $25.00 Violent Crimes Compensation Board penalty (P-2).

On April 9, 1986, the respondent was employed at C&T Deli in Atlantic City. Her employer, Caroline Taylor, would sometimes leave her personal credit cards unattended. On that date, the respondent took Ms. Taylor's Citibank Preferred Visa Card. The respondent thereafter went with her boyfriend, Antonio Bolton, to the Ocean One Mall. The respondent made various purchases at 29 different stores in the mall using the stolen credit card. The approximate value of the items purchased by the respondent using the stolen credit card is over $2,000.00 (P-5).

On June 19, 1986, the respondent was indicted by the Atlantic County Grand Jury in Indictment No. 86-06-1206, and she was charged with: count one, credit card theft, in violation of N.J.S.A 2C:21-6c(1); count two, theft of a credit card with the intent to defraud another, in violation of N.J.S.A. 2C:21-6d(2); count three, theft by deception in excess of $500, in violation of N.J.S.A. 2C:20-4; count four, forgery, in violation of N.J.S.A. 2C:21-1a(2); and count five; uttering a forged instrument, in violation of N.J.S.A. 2C:21-1a(3) (P-3). On September 29, 1986, the respondent

entered a plea of guilty to counts three and four of the indictment, theft by deception, in violation of N.J.S.A. 2C:20-4 and forgery, in violation of N.J.S.A. 2C:21-1a(2). On November 7, 1986, the respondent was sentenced on each count to serve 180 days in the Atlantic County jail, to be placed on probation for two years and to pay a total Violent Crimes Compensation Board penalty of $60.00. The sentences were to be served concurrently, and the remaining charges of the indictment were dismissed (P-4).

The respondent was born on November 2, 1949, and is currently 40 years old. She was raised by her parents in Atlantic City. She reached the twelfth grade in school; however, she did not graduate. She lived with her parents until she was 21 years old when she got married. The respondent was divorced four years ago, and she is the sole support for her 19 year old son and 9 year old daughter.

The respondent testified that she is not a drug addict and never used drugs. She obtained the T.V. Guide at her then husband's request; however, she asserts that she did not know drugs were contained in the magazine. She admits taking the credit card in order to buy clothes for her family and toys for her daughter. Her father had just died, she was upset, on welfare, and needed clothes for her family, so she took her employer's credit card with the intent to return it after using it. The respondent returned all the purchased merchandise to the stores.

The respondent became employed by the Showboat Hotel and Casino on December 3, 1987, as a housekeeper (R-1). This is her only job. She is a hard working employee and is regarded by her supervisors as being an excellent employee (R-2).

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, she has a direct interest in the outcome and a bias in these proceedings. However, during both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully in every regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. She appeared to testify truthfully and

she expressed regret and remorse for her misconduct. She also accepted full responsibility for her misconduct. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

FINDINGS OF FACT

1. The respondent was convicted in the Superior Court, Atlantic County, on October 8, 1982, of one count of possession of a controlled dangerous substance (methamphetamine) with the intent to distribute, in vioaltion of N.J.S.A. 24:21-20a(1). She was sentenced to be incarcerated for 30 days in the county jail and was ordered to pay a $25.00 Violent Crimes Compensation Board penalty.

2. On September 29, 1986, the respondent entered a plea of guilty to one count of theft by deception, in violation of N.J.S.A. 2C:20-4 and one count of forgery, in violation of N.J.S.A. 2C:21-1a(2). On November 7, 1986, the respondent was sentenced on each count to serve 180 days in the Atlantic County jail, to be placed on probation for two years and to pay a total Violent Crimes Compensation Board penalty of $60.00. The sentences were to be served concurrently, and the remaining charges of the indictment were dismissed.

3. The respondent was born on November 2, 1949, and is currently 40 years old. She was raised by her parents in Atlantic City. She reached the twelfth grade in school; however, she did not graduate.

4. She lived with her parents until she was 21 years old when she got married. The respondent was divorced four years ago, and she is the sole support for her 19 year old son and 9 year old daughter.

5. The respondent admitted taking her employer's credit card in order to buy clothes for her family and toys for her daughter. Her father had just died, she was upset, on welfare, and needed clothes for her family, so she took her employer's creidt card with the intent to return it after using it. The respondent returned all the purchased merchandise to the stores.

6. The respondent became employed by the Showboat Hotel and Casino on December 3, 1987, as a housekeeper. This is her only job. She is a hard

working employee and is regarded by her supervisors as being an excellent employee.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> b. 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;
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> 1. Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . . .
>
> N.J.S. 2C:21-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);
>
> N.J.S. 2C:21-1 et seq. (forgery and fraudulent practices which constitute crimes of the second or third);
>
> . . . .
>
> N.J.S. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance or a controlled dangerous substance analog which constitutes a crime of the second of third degree);
>
> . . . .

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

> a. No person may commence employment as a casino hotel employee unless he has been registered with the commission,

which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. 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 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, 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 or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

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

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

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

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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued

qualification of the individual . . .registrant." N.J.S.A. 5:12-129(1) provides for the revocation of 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 . . . registration." The Division contends, that the respondent was convicted of a violation of N.J.S.A. 2C:24-21-19a(1) which is the predecessor statute of N.J.S.A. 2C:35-5, possession of a controlled dangerous substance (methamphetamine) with the intent to distribute, N.J.S.A. 2C:20-4, theft by deception in excess of $500 (third degree), and N.J.S.A. 2C:21-1a(2), forgery (third degree), which constitutes violations of N.J.S.A. 5:12-86c(1), and that, accordingly, she is disqualified from continued registration.

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's passing her husband a T.V. Guide which contained methamphetamine constitutes a violation of N.J.S.A. 2C:35-5, which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:35-5, provides in pertinent part:

> a. Except as authorized by P.L. 1970, c. 226 (C. 24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:
>
> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog;
>
> . . . .
>
> b. Any person who violates subsection a. with respect to:
>
> . . . .
>
> (8) Methamphetamine, or its analog, in a quantity of one ounce or more including any adulterants or dilutants is guilty of a crime of the second degree;
>
> (9) Methamphetamine, or its analog, in a quantity of less than one ounce including any adulterants or dilutants is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to $50,000.00 may be imposed.

The Division established that the respondent was convicted of possession of a controlled dangerous substance (methamphetamine) with the intent to distribute, in violation of N.J.S.A. 24:21-19a(1), which is the predecessor statute of N.J.S.A. 2C:35-5. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:35-5. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-5b(8) and (9), the offense constitutes at least a crime of the third degree.

The Division further contends that the respondent's taking of her employer's credit card and purchasing goods with it constitutes a violation of N.J.S.A. 2C:20-4, which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:20-4, provides in pertinent part:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

The Division established, and the respondent admitted during her testimony, that she knowingly took her employer's credit card without permission and then used the credit card to purchase clothes and toys for her family. The Division further established, and the respondent admitted during her testimony that she had been convicted of a violation of N.J.S.A. 2C:20-4. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-4 and that she has been convicted of a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

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Finally, the Division contends that the respondent's wrongful use of her employer's credit card constitutes a violation of N.J.S.A. 2C:21-1, which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:21-1, provides in pertinent part:

> a. Forgery. A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:
>
> . . . .
>
> (2) Makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act or of a fictitious person, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
>
> . . . .
>
> "Writing" includes . . . credit cards . . . .
>
> b. Grading of forgery. Forgery is a crime of the third degree if the writing is or purports to be part of an issue of money . . . or other instruments represetning interest in or claims against any property or enterprise.
>
> Otherwise forgery is a crime of the fourth degree.

The Division established, and the respondent admitted during her testimony, that she knowingly used her employer's credit card without permission. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:21-1 and that she has been convicted of a violation of N.J.S.A. 2C:21-1. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:21-1b, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offenses committed by the respondent are a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-91d

A 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. 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 registrant's position;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the registrant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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.

In regard to the first criterion, Rosemarie Gibson is a casino hotel registrant and is employed as a housekeeper. As such, she does not have direct responsibilities for actual gaming activities but does come in contact with casino patrons. She is responsible for cleaning patron's rooms and has access to the patron's personal property.

Second, the respondent committed a violation of N.J.S.A. 2C3:5-5, possession of a controlled dangerous substance (methamphetamine) with the intent to distribute, a violation of N.J.S.A. 2C:20-4, theft by deception, and a violation of N.J.S.A. 2C:21-1a(2), forgery, prior to becoming employed in the casino industry. Because the offenses are listed disqualifiers under section 86c(1), they are very serious.

Third, the seriousness of the offense must be viewed in their appropriate context. In the first case, the respondent unknowingly passed drugs to her husband who was incarcerated in a county jail. In the second case, the respondent stole a credit card from her employer. This is a significant breach of trust. In mitigation, however, the respondent was in a state of depression regarding her father's recent death, she was on welfare, and needed clothes for her children.

Fourth, the respondent's misconduct first occurred in 1982, and her second incident occurred in 1986, when it ceased.

Fifth, the respondent was 33 years old at the time of the first offense and 37 years old at the time of the second offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was not isolated in nature. After being convicted of the drug offense in 1982, she committed the theft offense in 1986. She has not committed any other violations of the criminal laws.

Seventh, the respondent assented to her then husband's request to obtain a T.V. Guide for him. She did so not knowing the magazine contained drugs. In the second incident, the respondent's father, with whom she lived, had recently died, she was depressed, on welfare, working only two days a week, and she needed clothing for her two children.

Eighth, the respondent has been employed in the casino industry for two years. She is a hardworking employee who takes direction well. She is considered a "team player," is an excellent employee, and is an asset to the Showboat. The respondent is also a good mother. She is a single parent and is responsible for raising two children. She accepts full responsibility for her misconduct in both cases, and she is very remorseful. She successfully completed her probationary period and has remained incident free for three years.

The Commission has recently addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of

> the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases[1] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

This is an extremely difficult case. It is undisputed that the respondent has been convicted of statutory disqualifiers and is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1). Also, there is not a great deal of rehabilitative evidence; however, there is some evidence of rehabilitation. In this case, the respondent is a housekeeper. She had no responsibility for any casino gaming activity, but does have contact with casino patrons. Considering the nature of the position she holds, the respondent's work record in the industry, her demeanor and candor at the hearing, her expressed remorse and acceptance of responsibility, the fact that she abused her position of trust when she took her employer's credit card, the age of the offenses, the isolated nature of her offenses, her lack of involvement in the community, and her family status, when weighed against the eight rehabilitative criteria:

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-91d.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE**.

This recommended decision may be adopted, 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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1 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. NO. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. NO. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

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

November 30, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

12/4/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 5 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Superior Court of New Jersey, Law Division (Criminal), Atlantic County Indictment No. 7-64-82, filed July 20, 1982

P-2 Superior Court of New Jersey, Law Division (Criminal), Atlantic County Judgment of Conviction, dated October 8, 1982

P-3 Superior Court of New Jersey, Law Division (Criminal), Atlantic County Indictment No. 86-06-1206, filed June 19, 1986

P-4 Superior Court of New Jersey, Law Division (Criminal), Atlantic County Judgment of Conviction, dated November 7, 1986

P-5 Investigation Report, Atlantic City Police Department, dated April 26, 1986

For the Respondent:

R-1 Letter of Lisa M. Baglio, licensing/personnel administration manager, Showboat Hotel and Casino, dated November 13, 1989

R-2 Letter of Marsha Stern, director of housekeeping, and Antoinette Moore, assistant housekeeping, Showboat Hotel and Casino, dated April 18, 1989

WITNESSES

For the Petitioner:

Rosemarie Gibson, the respondent

For the Respondent:

Rosemarie Gibson, the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 89-184
OAL DOCKET NO. 2156-89
ORDER NO. 90-26-14

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. GNOC CORPORATION, t/a BALLY'S GRAND HOTEL AND CASINO, Respondent.	:	ORDER

A stipulation and settlement entered into by the parties having been filed with the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation and settlement having been filed with the New Jersey Casino Control Commission; and the parties having consented to modification of the settlement to apportion the stipulated penalty of $65,000 per count of the complaint; and the Commission having considered the entire record of these proceedings at its public meeting of June 27, 1990,

IT IS on this 5th day of July 1990, ORDERED that the initial decision-settlement is modified to apportion the penalty as follows:

Count I - $25,000 for admitted violations of N.J.A.C. 19:45-1.27(g)(1), (2), (3), (5) and (h).

Count II - $15,000 for admitted violations of N.J.S.A. 5:12-96(e); N.J.A.C. 19:45-1.8(a)(2); N.J.A.C. 19:45-1.26(f); N.J.A.C. 19:45-1.27(a)(4), (a)(5)(ii), (a)(10), (b), (c)(4)(iv), (f)(2), (f)(4), (g)(5) and (h).

Count III - $25,000 for admitted violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3(c).

IT IS FURTHER ORDERED that GNOC Corporation pay a civil penalty of $65,000 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control for the reasons stated in the initial decision-settlement, which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 2156-89
AGENCY DKT. NO. 89-184

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY,
Petitioner,
v.
GNOC CORPORATION T/A BALLY'S GRAND HOTEL AND CASINO,
Respondent.

Wendy Alice Way, Deputy Attorney General, for the petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Trent S. Dickey, Esq., for the respondent (Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross, attorneys)

Record Closed: **May 4, 1990** Decided: **May 9, 1990**

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

This matter concerns the complaint filed with the Casino Control Commission on February 28, 1988 seeking sanctions against the respondent, GNOC Corporation t/a/ Bailey's Grand Hotel and Casino. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on March 27, 1989 to be heard 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.

There was a telephone prehearing conference in this matter on May 9, 1989, before former Administrative Law Judge Stephen W. Thompson at which time the parties discussed the issues. Judge Thompson indicated that the matter would be transferred to the undersigned for purposes of conducting the hearing and rendering an initial decision.

The initial hearing date and subsequent hearing dates were adjourned at the request of the parties since they were discussing a stipulation of facts as well as a settlement.

The parties have now agreed to settle the matter and have prepared the attached stipulation indicating the terms of the settlement.

I have reviewed the record and the settlement terms and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1, and that the settlement should be approved. I approve the settlement and therefore, I **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 9, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

5/11/90
DATE

Kim Woody
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 14 1990
DATE

Jaynee LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

caj

392

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

None

For the Respondent:

None

WITNESSES:

For the Petitioner:

None

For the Respondent:

None

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State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement

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Attorneys for Respondent
GNOC, CORP., t/a Bally's Grand Hotel and Casino

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC-02516-89
AGENCY REF. NO. 89-184

STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant,	SETTLEMENT AGREEMENT
v.	
GNOC, CORP., t/a BALLY'S GRAND HOTEL AND CASINO,	
Respondent.	

PLEASE TAKE NOTICE that the above captioned matter has been discussed by and between the Parties involved, Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by and through its attorney, Robert J. Del Tufo, Attorney General of New Jersey, (Wendy Alice Way, Deputy Attorney General, appearing), and Respondent, GNOC, CORP., t/a Bally's Grand Hotel and Casino, by and through its attorneys, Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross (Trent S. Dickey, Esquire, appearing);

AND said factual matters having been resolved between the Division and Respondent GNOC;

IT IS HEREBY STIPULATED AND AGREED by and between the Division and Respondent GNOC that, for the purposes of the disposition of the above captioned matter and practices, the following is true and correct as stated:

1. Complainant, by and through its Division of Gaming Enforcement (hereinafter "Division"), is now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, C. 110, N.J.S.A. 5:12-1 et seq., hereinafter the "Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent GNOC, CORP., t/a Bally's Grand Hotel and Casino (hereinafter "GNOC"), is the current owner and operator of the casino hotel formerly trading as the Golden Nugget Hotel

Casino (the "Golden Nugget"). Said casino hotel was renamed "Bally's Grand Hotel and Casino" in or about October 1987. GNOC is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at Boston and Pacific Avenues in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. GNOC is the holder of a plenary casino license issued to it by the Commission authorizing it to operate a casino hotel in accordance with the Act and Commission regulations promulgated thereunder. Said license was issued to GNOC effective September 21, 1985, and it was last renewed on September 19, 1988. GNOC has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

4. GNOC is the holder of, and operates pursuant to, a Certificate of Operation effective September 21, 1985. GNOC has conducted its casino operations pursuant to said Certificate of Operation continually to date including all times referenced herein. Said Certificate of Operation entitles GNOC to operate a casino hotel in accordance with the Act and Commission regulations promulgated thereunder.

5. GNOC is the successor in interest to GNAC, CORP. (hereinafter "GNAC"), t/a the Golden Nugget Hotel and Casino.

GNAC was the holder of a Certificate of Operation effective December 2, 1980, at which time GNAC was the holder of a temporary casino permit. GNOC succeeded GNAC's interest as a casino licensee as of May 1, 1984.

6. On or about March 1, 1987, Bally Manufacturing Corporation (hereinafter "Bally") acquired the assets of GNAC. Among those assets was GNOC, which holds the casino license. Prior to Bally's purchase of the assets of GNAC, Bally had no responsiblity or involvement in the managment or operation of the Golden Nugget.

7. In or about March 1986 substantial amendments to the Commission regulations governing the issuance of credit to patrons of the New Jersey legalized casinos went into effect (the "Credit Amendments"). Contemporaneously with the effective date of the Credit Amendments, former management of Golden Nugget established credit practices governing the issuance and increases of credit. The Respondent generally would not grant patrons applying for initial credit the maximum credit for which the patron applied and could reasonably qualify in the Respondent's judgment. The Respondent would, however, approve a lesser amount so that the patron's play at the tables could be assessed and future credit increases could be granted at the patron's request. Respondent sought to maintain credit patrons at an approved credit limit for a period of time which varied based upon the credit department's discretion before a patron's credit limit increase requests were made permanent

and notwithstanding Respondent's determination that a patron was qualified for a higher credit limit.

8. The Respondent's credit practice was designed to fully comply with the credit verification requirements of N.J.A.C. 19:45-1.27(a)-(g) when approving a patron's credit application or when granting a credit increase regardless of amount or duration of the credit increase. The Respondent's procedures were not intended to utilize N.J.A.C. 19:45-1.27(h) (temporary this trip only credit increases) which did not require a full credit check but which placed limitations on the frequency and the amount of credit increases. The Respondent's practice for the initial granting of credit after receipt of a patron's application was as follows:

(a) A credit clerk was responsible to make certain that the application contained the information required by N.J.A.C. 19:45-1.27(a);

(b) A clerk was responsible for verifying the banking information on the application;

(c) A commercial credit report was obtained on customers through the on-site terminals which would verify outstanding indebtedness, patron's address and other such information;

(d) A report was then obtained from Central Credit showing a patron's credit history and balances at other casinos and the Central Credit report information was run down manually by the credit clerk by verifying it with the casinos referenced;

(e) The information gathered above was then given to a credit executive who verified the completeness of the information, reviewed the information obtained from the secondary sources and cross checked the reference information;

(f) For patron credit applications of less than $25,000, the credit executive would then make a decision as to the application and execute the appropriate documents. For requests of greater than $25,000, the Respondent would often obtain a Dun & Bradstreet report and senior credit executive approval or credit manager's approval was required in addition to that of the credit executive;

(g) With credit approval, a card, the original of which was maintained at the cage, was signed by the credit executive approving the credit line. A hold was placed on the credit line until the customer physically presented himself or herself to the cage where two forms of identification were required and were recorded on the back of the card and noted on the application. A physical description of the customer was taken at the cage and the card was then signed by a cage supervisor. After the card was complete, a cage cashier would input the information into the computer system and the patron's signature was scanned for the pit clerks to verify at the gaming tables. The credit line was then activated, a photocopy of the card was then placed in the patron's credit file and the original maintained at the cage.

9. Patrons with established credit lines desiring a credit increase were required to submit a written credit increase request. The Respondent would then proceed with its credit check in conformance with N.J.A.C. 19:45-1.27(g) irrespective of the duration of the credit increase. A patron who had reached his current extended credit limit and who had made a written credit limit increase request would be granted the increase, provided the patron was determined to be financially qualified for the increase and a full credit check pursuant to N.J.A.C. 19:45-1.27(g) had been satisfactorily performed. The patron was advised by Respondent that the credit line would be subsequently reduced to the original credit approval level until Respondent was satisfied that the patron was comfortable

with and warranted continous play at a higher credit limit.

10. Upon a patron's request, the Respondent granted to said patron a higher credit line to be permanently maintained once the Respondent determined that said patron warranted same after having been granted several increases that were subsequently reduced. Absent a customer's request, a change in financial circumstances or derogatory information, the Respondent would document regular credit line reductions by a notation to the patron's credit file "to be reviewed". That notation signified to the credit department that the patron's credit limit should subsequently be reduced to the original level until the credit department was satisfied that the patron was playing at the higher credit limit to their mutual satisfaction.

11. In most circumstances, the Respondent granted a patron three or four increases that were subsequently reduced before maintaining the higher credit limit. Respondent maintains that its decisions were based on factors such as the patron's manner and rating of play, timing of repayment and other factors. The Respondent maintains that this practice reduced the risk of loss to the casino and allowed the Respondent to increase a patron's limit at the patron's request and to allow the credit gambler to utilize the casino's money when a bad streak of luck occurred. If a patron was given the maximum credit line that in the judgment of the Respondent it could reasonably

extend, the Respondent would then be unable to increase a patron's line during an unlucky streak, causing the patron to feel the casino had treated him unfairly.

12. In or about November 1988, the Respondent was informed by the Division that it considered its practice of granting permanent credit line increases to patrons and then subsequently reducing the credit increase to be a violation of N.J.A.C. 19:45-1.27(h). Upon learning of the Division's objections, the Respondent immediately stopped the practice of granting and subsequently reducing increases it considered to have been granted pursuant to and in compliance with N.J.A.C. 19:45-1.27(g).

13. During the period January 1988 through July 1988, all of the patrons listed below in Schedules A through G, which schedules are incorporated herein, were credit patrons of Respondent. Said patrons, as well as patron Mohammed Niloofari whose credit transactions are itemized in Schedule H below, were granted credit limit increases in accordance with Respondent's credit practices described above in paragraphs 8 through 12. Schedules A through H below reflect the credit limits for the itemized patrons and their credit limit increases by Respondent granted during the relevant months.

14. Notwithstanding the Respondent's designation of or lack of designation of credit limit increases approved by Respondent for the 87 patrons listed below in Schedules A through H of paragraph 13, said increases were not limited to two (2) during any thirty (30) day period and/or the total amount of said increases during said thirty (30) day period exceeded ten percent (10%) of each patron's credit limit at the time when Respondent approved an increase thereto.

15. A copy of patron Mohammad Niloofari's credit application dated April 18, 1986 is maintained by Respondent in the patron's credit file, but the original credit application has not been located. The copy does not include the following information: the telephone number of patron's residence; patron's type of business, the patron's source of income; the type of identification, if any, presented by the patron at the time of the application; and the patron's average bank balance for the last twelve months or an indication that such information was unavailable. The original application was accepted and approved during the time that the former management and owners operated GNOC.

16. On eleven occasions during the period from April 22, 1986 through and including January 27, 1987, the former owners and managers of GNAC reduced patron Niloofari's credit limit without indicating the key factors for the reductions in the patron's credit file except for the notation "to be reviewed". On two occasions, May 18, 1986 and November 9, 1986, they failed to properly record on the patron's credit application or the authorized credit limit increase section of the patron's credit file the time of the authorizations of credit limit increases to Niloofari.

17. On May 25, 1986, the former owners and managers of GNAC accepted patron Niloofari's personal check no. 136 in the amount of $5,000 of same date and processed it in a substitution transaction for a previously issued counter check. The cashier who accepted this check failed to record on it the serial number of the counter check being substituted by the acceptance of the personal check.

18. To Respondent's knowledge, that part of the credit practices and philosophy of the former owners and managers of GNAC and of Respondent that involved the granting of increases of credit in accordance with N.J.A.C. 19:45-1.27(g) and subsequently reducing such increases several times before permanently maintaining a higher credit limit was never submitted to nor received the approval of the Commission as part of its approved accounting and internal control submissions. But approval for the granting of credit and credit increases in

compliance with N.J.A.C. 19:45-1.27(g) is a part of Respondent's internal controls and was approved by the Commission. Golden Nugget determined that its practice of increasing credit pursuant to N.J.A.C. 19:45-1.27(g) and subsequently reducing same did not need to be submitted to the Commission for its approval, since credit decreases are not regulated by the Act except to the extent that same may be regulated by N.J.A.C. 19:45-1.27(f) and (h). No substantive changes to GNOC's credit practices were made by Respondent after the acquisition of GNAC by Bally nor was the determination regarding submission of the practice to the Commission reconsidered by Respondent.

19. Respondent cannot locate and therefore does not refute that it did not obtain a written request from patron James J. Chebalo prior to Respondent's authorization of a credit limit increase for him on February 19, 1988, or for patron Erol Onaran on or about February 16, 1988 or for Jerry Vincent Russo on July 23, 1988 at 12:20 p.m., 12:32 p.m. and 3:00 a.m.

20. Respondent failed to verify or at least failed to record the current casino credit limits and outstanding balances of patron Chebalo as part of its authorization of a credit limit increase for him on or about May 11, 1988, or for patron Gold on or about May 10, 1988 or for patron Ryan on or about March 1, 2, and 24, 1988.

21. Respondent failed to verify or at least failed to record patron Chebalo's outstanding indebtedness prior to authorizing his credit limit increases on or about March 3, 20, 22 and 24, 1988.

22. In or about November 1988, Respondent ceased its practice of authorizing credit limit increases for its gaming patrons as described above and subsequently reducing said increases.

23. N.J.S.A. 5:12-96(e) provides as follows:

> It shall be an express condition of continued operation under this act that a casino Respondent shall maintain all books, records, and documents pertaining to the Respondent's operations and approved hotel in a manner and location within this State approved by the commission. All such books, records and documents shall be immediately available for inspection during all hours of operation in accordance with the rules of the commission and shall be maintained for a period of seven years or such other period of time as the commission shall require.

24. N.J.S.A. 5:12-99, which was effective at all times referenced herein, sets forth certain required procedures for casinos regarding the maintenance of a system of internal procedures and administrative and accounting controls. Said statutory provision provides in pertinent part:

> a. Each casino Respondent shall submit to the commission a description of its system of internal procedures and administrative and accounting controls ... Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the casino, including, but not limited to:
>
> * * *
>
> (1) Accounting controls, including the standardization of forms and definition of terms to be utilized in the gaming operations;

* * *

(4) Procedures within the cashier's cage for the receipt, storage and disbursal of chips, cash, and other cash equivalents used in gaming; the cashing of checks; the redemption of chips and other cash equivalents used in gaming; the pay-off of jackpots; and the recording of transactions pertaining to gaming operations;

* * *

(13) Procedures for the cashing and recordation of checks exchanged by casino patrons....

* * *

b. The commission shall review each submission required by subsection a. hereof, and shall determine whether it conforms to the requirements of this act and to the regulations promulgated thereunder and whether the system submitted provides adequate and effective controls for the operations of the particular casino submitting it. If the commission finds any insufficiencies, it shall specify same in writing to the casino Respondent, who shall make appropriate alterations. When the commission determines a submission to be adequate in all respects, it shall notify the casino Respondent of same. No casino Respondent shall commence gaming operations or, alter in fact its internal controls, unless and until such system of controls is approved by the commission.

25. N.J.A.C. 19:45-1.1, et seq., represent regulations, effective at all times referenced herein and promulgated by the Commission pursuant to N.J.S.A. 5:12-70, which set forth specific requirements and prohibited practices with regard to, among other things, the maintenance and operation of a system of internal procedures and accounting controls including the approval and issuance of casino credit to gaming patrons.

26. N.J.A.C. 19:45-1.3, which was effective at all times referenced herein, provides, in pertinent part:

> (c) Each casino Respondent shall submit to the commission and division any changes to the system of internal procedures and administrative and accounting controls previously determined by the commission in subsection (b) of this section to be adequate in all respects at least 90 days before the changes are to become effective, unless otherwise directed by the commission. The proposed changes shall be submitted to the commission and such changes may be approved or disapproved by the chairman unless any commissioner indicates the changes should be considered by the entire commission in which case such changes shall be so considered. No casino Respondent shall alter its internal controls unless and until such changes are approved.

27. N.J.A.C. 19:45-1.8(a)(2), which was effective at all times referenced herein, states as follows:

> Except as otherwise provided in this section, all original books, records and documents pertaining to the casino Respondent's operations and approved hotel shall be: ...[r]etained on the site of the approved hotel building for a period of at least seven years....

28. N.J.A.C. 19:45-1.26(f), which was effective at all times referenced herein, provides as follows:

> Upon acceptance of cash or cash equivalents, gaming chips and plaques, or another check in redemption, consolidation or substitution of a check(s), the general cashier shall immediately return to the gaming patron the check(s) being redeemed, consolidated or substituted. If such redemption, consolidation or substitution is accomplished by the acceptance of another check, the general cashier accepting such check shall date and time stamp the check, place his initials on the check, and record on the check the serial number of the counter check(s) being redeemed, consolidated or replaced.

29. N.J.A.C. 19:45-1.27, which sets forth specific procedures for granting credit, and recording checks exchanged, redeemed or consolidated and which was effective at all times referenced herein, states, in pertinent part, as follows:

> (a) A credit file for each patron shall be prepared by a general cage cashier or credit department representative with no incompatible functions either manually or by computer prior to the casino Respondent's approval of a patron's credit limit. All patron credit limits and changes thereto shall be supported by the information contained in the credit file. Such file shall contain a credit application form upon which shall be recorded, at a minimum, the following information provided by the patron:
>
> 1. The patron's name;
>
> 2. The address of the patron's residence;
>
> 3. The number of years at that address;
>
> 4. The telephone number at the patron's residence;
>
> 5. Employment information including:
>
> i. The name of the patron's employer, or an indication of self employment or retirement;
>
> ii. Type of business;
>
> iii. The patron's position;
>
> iv. Number of years employed;
>
> v. The patron's business address; and
>
> vi. The patron's business telephone number.
>
> 6. Banking information including:
>
> i. The name and location of the patron's bank; and

ii. The account number of the patron's personal check account upon which the patron is individually authorized to draw and upon which all counter checks and all checks used for substitution, redemption or consolidation will be drawn. Checking accounts of sole proprietorship shall be considered as personal checking accounts. Partnership or corporate checking accounts shall not be considered personal checking accounts.

7. The credit limit requested by the patron;

8. The name of each casino where the patron has a casino credit limit;

9. The approximate amount of all other outstanding indebtedness;

10. The amount and source of income and assets in support of the requested credit limit; and

11. The patron's signature indicating acknowledgment of the following statement, which shall be included at the bottom of every credit application form containing the information required to be submitted by the patron pursuant to this subsection: "I certify that I have reviewed all of the information provided above and that it is true and accurate. I authorize (insert the name of the casino Respondent) to conduct such investigations pertaining to the above information as it deems necessary for the approval of my credit limit. I am aware that this application is required to be prepared by the regulations of the Casino Control Commission and I may be subject to civil or criminal liability if any material information provided by me is willfully false."

(b) A general cage cashier or credit department representative with no incompatible functions shall record the following information in the credit file prior to the casino Respondent's approval of a patron's credit limit:

1. A physical description of the patron which shall include, but not be limited to the following:

i. Date of birth;

ii. Height;

iii. Weight;

iv. Hair color; and

v. Eye color.

2. The type of identification credentials examined containing the patron's signature and whether said credentials included a photograph or general physical description of the patron; and

3. The signature of the general cage cashier or credit department representative with no incompatible functions indicating that the signature to the patron in the credit file appears to agree with the signature on the identification credentials presented by the patron and that the physical description of the patron appears to agree with the patron's actual appearance. The date and time of the signature of the general cage cashier or credit department representative with no incompatible functions shall be recorded either mechanically or manually contemporaneously with the transaction.

(c) Prior to the casino Respondent's approval of the patron's credit limit, a credit department representative with no incompatible functions shall:

1. Verify the address of the patron's residence;

2. Verify the patron's current casino credit limits and outstanding balances which shall include the following:

i. The date the patron's credit account was established;

ii. The amount of the current approved credit limit at each casino; and

iii. The current balance and status of the patron's credit account at each casino including checks deposited by New Jersey casinos that have not yet cleared the bank and derogatory information. ("Derogatory" is define

as patron credit accounts partially or completely uncollectible, checks returned unpaid by the patron's bank, settlements, liens, judgments, and any other credit problems of the patron);

3. Verify the patron's outstanding indebtedness; and

4. Verify the patron's personal checking accounting information which shall include, but not be limited to, the following:

i. Type of account (personal checking or sole proprietorship);

ii. Account number;

iii. Date the account was opened;

iv. Average balance of the account for the last twelve months, if available (if this information is not available, then this shall be noted in the credit file):

v. Current balance in the account if available (if this information is not available then this shall be noted in the credit file);

vi. Whether the patron can sign individually on the account; and

vii. Name and title of the person supplying the information;

* * *

(f) The credit limit, and any changes thereto, must be approved by any one or more of the individuals holding the job positions of vice president of casino operations (or an equivalent executive of a casino Respondent that is either a partnership or sole proprietorship), credit manager, assistant credit manager, credit shift manager, credit executive or a casino credit committee composed of casino key employees with no incompatible functions which may approve credit as a group but whose members may not approve credit individually unless such person is included in the job positions referenced above. The approval shall be recorded in the credit file and shall include:

1. Any other information used to support t credit limit and any changes thereto; includi the source of the information, if such information is not otherwise recorded pursuant to this section;

2. A brief summary of the key factors relied upon in approving or reducing the requested credit limit and any changes thereto;

3. The reason credit was approved if derogatory information was obtained during the verification process; and

4. The signature of the employee approving the credit limit. The date and time of the signature shall be recorded either mechanically or manually contemporaneously with the transaction.

(g) Prior to approving a credit limit increase, a representative of the casino Respondent's credit department shall:

1. Obtain a written request from the patron which shall include:

i. Date and time of the patron's reques

ii. Amount of credit limit increase requested by the patron; and

iii. Signature of the patron.

2. Verify the patron's current casino credit limits and outstanding balances, as required by (c)2ii and (c)2iii above, unless such verification has been performed earlier that same gaming day;

3. Verify the patron's outstanding indebtedness and personal checking account information, as required by (c)3 and (c)4 above, unless such procedures have been performed within the previous six months:

4. Consider the patron's player rating based on a continuing evaluation of the amount and frequency of play subsequent to the patron's initial receipt of credit. The patron's player rating shall be readily available to representatives of the casino Respondent's credit department prior to their approving

patron's request for a credit limit increase. The information for the patron's player rating shall be recorded on a player rating form by casino department supervisors or put directly into the Respondent's computer system pursuant to an approved submission and shall include, but not be limited to, the following:

i. Patron's name;

ii. Game and table number;

iii. Average bet;

iv. Approximate length of time played;

v. Rating as determined by supervisor or approved computer system;

vi. Signature and license number of the casino supervisor responsible for providing the patron's player rating information; and

vii. Date of observations.

5. Including the information and documentation required by paragraphs 1 through 3 above and patron's player rating indicated at the time the credit increase is approved in the patron's credit file.

(h) Credit limit increases may be approved without performing the requirements of (g)2 and (g)3 above if the increases are temporary and are noted as being for this trip only (TTO) in the credit file. Temporary increases shall be limited to two during any thirty day period and the total amount of the temporary increases during that period shall not exceed ten percent of the currently approved credit limit.

THEREFORE, the Parties hereby make application to the Honorable Valerie H. Armstrong, Acting Chair, Casino Control Commission, and the Honorable Beatrice Tylutki, A.L.J., Office of Administrative Law, for permission to submit the following Stipulation of Settlement for consideration by the Office of

Administrative Law in its Initial Decision and by the Casi Control Commission as a final resolution of Complaint No. 89-184:

WHEREAS, the Division has caused Complaint No. 89-184 to be filed; and

WHEREAS, the issues raised by the Division in Complaint No. 89-140 have been addressed inasmuch as in or about November 1988, Respondent GNOC ceased its practice of approving credit limit increases for its gaming patrons as described above; and

WHEREAS, the Parties agree that GNOC obtained a written request from patron Sidney Handelman prior to Respondent GNOC's authorization of a credit increase for said patron on or about January 23, 1988, which written request was produced by Respondent GNOC in the discovery exchange between the Parti and the Parties agree that the allegations pertinent to patron Handelman set forth in paragraphs 10 and 36 of the First Count of the above captioned Complaint are hereby withdrawn; and

WHEREAS, Respondent GNOC did obtain a written request from patron Frank Grezlik prior to Respondent GNOC's authorization of a credit limit increase for said patron on or about February 3, 1988, which written request was produced by Respondent GNOC in the discovery exchange between the Parties and the Parties agree that the allegations pertinent to patron Grezlik set forth in paragraphs 14 and 36 of the First Count of the above captioned Complaint are hereby withdrawn; and

WHEREAS, the credit limit increases authorized by Respondent GNOC for patron Adele Golia as listed in Schedule A of paragraph 7 of the First Count of the above captioned Complaint were incorrectly listed and the parties agree that the allegations pertinent to patron Golia set forth in paragraphs 7, 8, 9 and 35 of the First Count of the above captioned Complaint are hereby withdrawn; and

WHEREAS, the Parties agree that the allegations pertinent to Kenneth Beyer set forth in paragraphs 26 and 3[redacted] of the First Count of the above captioned Complaint are hereby withdrawn inasmuch as patron Beyer is referenced thereby as being listed in Schedule E of paragraph 23 of the First Count of the above captioned complaint which Schedule and paragraph does not list said patron; and

WHEREAS, Respondent did perform and did maintain records of patron Niloofari's ratings at the time credit increases were approved by Respondent GNOC's credit executives and such documentation was produced by Respondent in the discovery exchange between the Parties, the Parties agree that the allegations pertinent to the absence of Niloofari player ratings set forth in paragraph 17 of the Second Count of the Complaint are hereby withdrawn; and

WHEREAS, the Division contends and Respondent GNOC admits that Respondent: (a) Violated N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3 inasmuch as Respondent admits that GNOC's practice of authorizing credit limit increases pursuant to N.J.A.C. 19:45-

1.27(g) and subsequently reducing said increases as described herein was apparently never submitted to nor received the approval of the Commission as part of Respondent's approved accounting and internal controls submissions; (b) violated N.J.A.C. 19:45-1.27(h) inasmuch as, notwithstanding the designation of or lack of designation of the credit limit increases approved by Respondent whether approved pursuant to N.J.A.C. 19:45-1.27(g) or not, the practice of reducing said increases, GNOC admits notwithstanding the opinion of its former owners and management, should be governed by the temporary credit increase provisions of the Act and Regulations promulgated thereunder which limit such increases to 2 in number and to 10% of a patron's pre-increase credit limit within a 30-day period; (c) violated N.J.A.C. 19:45-1.27(g)(1) and (5) by failing to obtain a written request for credit increase from patrons Chebalo, Onaran and Russo as described above in paragraph 22; (d) violated N.J.A.C. 19:45-1.27(g)(3) by failing to verify patron Chebalo's outstanding indebtedness prior to approving a credit limit increase for said patron as described in paragraph 24; (e) violated N.J.A.C. 19:45-1.27(g)(2) by failing to verify the current casino credit limits and outstanding balances of patrons Chebalo, Gold, and Rhyne as described in paragraph 23; (f) violated N.J.A.C. 19:45-1.27(a)(4), a5(ii), a(10), (b) and (c)(4) (iv) by processing patron Niloofari's credit application apparently omitting the information or failing to have the information in the patron's

credit files as described in paragraph 18; (g) violated N.J.A.C. 19:45-1.27(f)(2) by reducing patron Niloofari's credit limit on 11 occasions without indicating the key factors for said reductions on any documentation contained in the patron's credit file except the notation "to be reviewed" as described in paragraph 19; (h) violated N.J.A.C. 19:45-1.27(f)(4) by failing to record the time of the authorizations of credit limit decreases to patron Niloofari's account which occurred on May 18, 1986 and November 9, 1986 as described in paragraph 19; (i) violated N.J.A.C. 19:45-1.26(f) by failing to record on patron Niloofari's personal check #136 the serial number of the counter check for which said personal check was substituted as described above in paragraph 20; and (j) violated N.J.S.A. 5:12-96(e) and N.J.A.C. 19:45-1.8(a)(2) by failing to maintain the original credit application of patron Niloofari even though Respondent maintains a copy thereof as described above in paragraph 15;

WHEREAS, the Parties are desirous of amicably settling this litigation without the necessity of a full hearing; and

WHEREAS, the Parties respectfully submit that the terms of this Stipulation of Settlement as well as the imposition of a civil monetary penalty in the amount of $65,000 against Respondent GNOC is just and equitable in light of the statutory guidelines set forth in N.J.S.A. 5:12-130; and

WHEREAS, this Stipulation of Settlement must be accepted by the full Commission, upon the recommendation of the Honorable Beatrice Tylutki, A.L.J., before it becomes effective.

NOW, THEREFORE, BE IT RESOLVED that upon approval of this Stipulation of Settlement by the Casino Control Commission, Respondent GNOC agrees to pay the sum of Sixty-Five Thousand

Dollars ($65,000) in full settlement of the above captioned Complaint and, upon payment of said sum, Complaint No. 89-184 shall be deemed fully adjudicated and resolved. The Parties acknowledge that this Settlement pertains to and resolves all allegations contained in the Complaint and all such similar conduct and related practices prior to the filing of the Complaint.

Respectfully submitted,

ROBERT J. DEL TUFO
ATTORNEY GENERAL OF NEW JERSEY

Dated: 5/4/90

By: Wendy Alice Way
Wendy Alice Way
Deputy Attorney General

Attorney for Complainant,
State of New Jersey, Department
of Law and Public Safety,
Division of Gaming Enforcement.

SILLS CUMMIS ZUCKERMAN RADIN
TISCHMAN EPSTEIN & GROSS

Dated: 4/30/90

By: _____
Trent S. Dickey, Esquire

Attorney for Respondent,
GNOC, Corp., t/a Bally's
Grand Hotel and Casino.

January

Schedule A

Patron Name	Credit Limit Increases Pre Increase Credit Limit	Credit Limit After Increase
Peter Boyas	$40,000	$50,000
Lucas Capelli	100,000	170,000
James Chebalo	50,000	70,000
Manny Correia	20,000	26,000
Marshall Coyne	35,000	45,000
Anthony Frostman	450,000	800,000
	800,000	1,230,000
Adele Golia	50,000	75,000
	75,000	85,000
Benjamin Gordon	25,000	30,000
Anthony Guarino	50,000	70,000
Phyllis Handelman	55,000	65,000
Sidney Handelman	110,000	140,000
Vasilios Kalathas	20,000	30,000
Raymond Lamoureux	20,000	40,000
Howard Levenstein	20,000	30,000
Jerome Levine	30,000	40,000
Sam Malamud	100,000	120,000
Raymond Marcoux	20,000	22,500
	22,500	25,000
Edward Meyers	20,000	40,000
Erol Onaran	40,000	50,000
	50,000	60,000
Irving Paparo	250,000	350,000
Ralph Page	20,000	32,000
Peter Papas	20,000	25,000
Cecil Procelain	20,000	26,000
Samuel Potrock	25,000	35,000
John Rhyne	20,000	25,000
	25,000	35,000
	25,000	35,000
Ed Romanow	50,000	70,000
Langhorn Rorer	30,000	40,000
H. Richard Shields	25,000	35,000
Basil Stonbely	20,000	25,000

February

Schedule B

Patron Name	Credit Limit Increases Pre Increase Credit Limit	Credit Limit After Increase
Alfred Abrams	$15,000	$23,100
Norman Bahary	15,000	25,000
	25,000	30,000
David Baker	30,000	40,000
	40,000	50,000
Myles Bass	125,000	175,000
Nathan Canter	75,000	100,000
James Chebalo	50,000	90,000
Leo Eisenberg	25,000	35,000
Frank Grezlik	40,000	50,000
Sidney Handelman	110,000	130,000
Vahak Hovnanian	50,000	75,000
Edward Leroux	125,000	165,000
Sam Malamud	100,000	120,000
	120,000	140,000
Edward Meyers	20,000	40,000
	40,000	60,000
Herbert Natiss	50,000	60,000
Erol Onaran	40,000	60,000
	40,000	50,000
Irving Paparo	250,000	350,000
Ralph Pape	22,000	28,000
Samuel Potrock	25,000	35,000
John Rhyne	10,000	45,000
	10,000	20,000
	20,000	30,000
	30,000	35,000
	10,000	54,000
Edward Romanow	50,000	70,000
H. Richard Shields	25,000	35,000
Steven Weiss	250,000	500,000

March

Schedule C

Patron Name	Credit Limit Increases Pre Increase Credit Limit	 Credit Limit After Increase
Myles Bass	$125,000	$200,000
	200,000	225,000
James Chebalo	50,000	90,000
	50,000	90,000
	50,000	90,000
	50,000	90,000
Ronald Chernow	30,000	40,000
Anthony Forstman	450,000	650,000
Jon Googel	300,000	400,000
Benjamin Gordon	25,000	30,000
	25,000	30,500
	30,500	35,000
Sidney Handelman	110,000	130,000
	110,000	130,000
Hirair Hovnanian	1,000,000	1,200,000
Lewis Kasman	25,000	30,000
Michael Krupin	20,000	30,000
Edward Leroux	125,000	145,000
	145,000	165,000
	125,000	165,000
Louis Ligator	50,000	62,000
Sam Malamud	100,000	130,000
Walter Miller	30,000	40,000
Edward Meyers	20,000	40,000
	20,000	60,000
Erol Onaran	40,000	60,000
	40,000	60,000
Irving Paparo	250,000	350,000
John Rhyne	25,000	35,000
Mario Rinaldi	20,000	25,000
Edward Romanow	50,000	70,000
	50,000	70,000
Kevin Rooney	50,000	70,000
Marvin Rosenshine	50,000	75,000
Jack Saltzman	20,000	50,000
	50,000	60,000
Robert Simons	100,000	200,000
	200,000	250,000

April

Schedule D

Patron Name	Credit Limit Increases Pre Increase Credit Limit	Credit Limit After Increase
James Chebalo	$50,000	$100,000
Joseph Coury	100,000	120,000
	120,000	140,000
Anthony Guarino	50,000	70,000
	50,000	70,000
Raymond Guarino	20,000	30,000
Lewis Kasman	25,000	60,000
Arthur Lagowitz	20,000	25,000
Edward Leroux	125,000	145,000
Sam Malamud	100,000	120,000
Kenneth Martin	20,000	30,000
Robert McMurtri	100,000	125,000
	100,000	125,000
Nicholas Mecca	20,000	25,000
Edward Meyers	20,000	60,000
Erol Onaran	40,000	55,000
Ralph Pape	22,000	33,000
Edward Roberts	25,000	35,000
John C. Rhyne	25,000	35,000
Steven Weiss	250,000	400,000

May

Schedule E

Patron Name	Credit Limit Increases Pre Increase Credit Limit	 Credit Limit After Increase
Eliahu Benhous	$50,000	$100,000
Donald Carroll	25,000	35,000
James Chebalo	50,000	100,000
	50,000	100,000
	50,000	100,000
Joseph Coury	100,000	140,000
	100,000	120,000
Anthony Demarco	30,000	40,000
Enrico Devera	22,000	27,000
James Dizazzo	25,000	30,000
George Giannaris	20,000	25,000
Henry Gold	100,000	111,000
Thomas Holt	100,000	120,000
Sandy Juckel	20,000	37,000
Edward Leroux	125,000	165,000
	125,000	165,000
Ray Lobrano	20,000	25,000
Sam Malamud	100,000	145,000
	100,000	120,000
	100,000	120,000
Kenneth Martin	20,000	30,000
Robert McMurtie	100,000	200,000
	100,000	200,000
Edward Meyers	20,000	60,000
Irving Paparo	250,000	300,000
Robert Pinker	25,000	36,000
Norman Popkin	25,000	40,000
Richard Porter	20,000	25,000
John Rhyne	25,000	45,000
	25,000	35,000
	35,000	45,000
	35,000	45,000
	25,000	55,000
Kevin Rooney	50,000	100,000
	50,000	60,000
Bennett Rubin	40,000	60,000
Kite Thomas	35,000	50,000
	50,000	75,000
Stanley Torno	20,000	30,000
Steven Weiss	250,000	400,000
Ayram Zeff	50,000	90,000

June

Schedule F

Patron Name	Credit Limit Increases Pre Increase Credit Limit	Credit Limit After Increase
Joseph Coury	$100,000	$120,000
George Delisi	20,000	30,000
William Frankel	60,000	70,000
Frank Grezlik	40,000	50,000
Thomas Holt	100,000	120,000
	100,000	120,000
Louis Kaminoff	20,000	25,000
Pearl Knoll	25,000	30,000
	25,000	30,000
George LaLonde	50,000	100,000
Louis Ligator	50,000	60,000
Sam Malamud	100,000	140,000
Edward Meyers	20,000	60,000
Irving Paparo	250,000	350,000
John Rhyne	25,000	35,000
	35,000	40,000
Kevin Rooney	50,000	81,000
	50,000	100,000
	50,000	75,000

July

Schedule G

Patron Name	Credit Limit Increases Pre Increase Credit Limit	Credit Limit After Increase
Myles Bass	$125,000	$200,000
	135,000	225,000
Shanna Brandywine	70,000	80,000
Donald Carroll	25,000	40,000
	40,000	55,000
	55,000	65,000
James Chebalo	65,000	80,000
	50,000	100,000
	100,000	120,000
	50,000	100,000
Joseph Coury	100,000	130,000
Anthony DeMarco	30,000	40,000
Steven Erlbaum	100,000	150,000
Anthony Forstman	450,000	850,000
	450,000	585,000
George Giannaris	20,000	25,000
	20,000	26,000
Henry Gold	100,000	186,000
	100,000	161,000
Phyliss Handelman	55,000	65,000
Thomas Holt	100,000	120,000
Robert Hunt	25,000	35,000
Pearl Knoll	25,000	30,000
Raymond Lamoureux	20,000	40,000
Ugo Lancia	25,000	35,000
Norman Leiman	40,000	50,000
Edward Leroux	125,000	145,000
	125,000	165,000
Howard Levenstein	20,000	26,000
Louis Ligator	50,000	60,000
	50,000	60,000
Ray Lubrano	20,000	26,000
	26,000	30,000
Sam Malamud	100,000	140,000
Edward Meyers	20,000	150,000
	20,000	100,000
	100,000	200,000
Erol Onaran	40,000	60,000
	60,000	100,000
Irving Paparo	250,000	300,000
Anthony Paulos	20,000	30,000
Robert Pfundstein	30,000	35,000
	30,000	40,000
	30,000	40,000
John Regina	25,000	35,000
Langhorn Rorer	30,000	40,000

Jerry Russo	160,000	200,000
	200,000	250,000
	150,000	300,000
Ronald Shankoff	25,000	35,000
Sidney Soltoff	20,000	25,000
S. Reza Teimouri	50,000	60,000
Kite Thomas	35,000	100,000

Schedule H

Patron Name	Credit Limit Increases Pre Increase Credit Limit	Credit Limit After Increase
Mohammed T. Niloofari - May 1986	$ 15,000	$ 16,500
	15,000	20,000
	15,000	20,000
	15,000	20,000
July 1986	20,000	30,000
	20,000	35,000
August 1986	20,000	30,000
	20,000	30,000
September 1986	20,000	30,000
October 1986	30,000	40,000
November 1986	20,000	30,000
	20,000	30,000
	30,000	40,000
	30,000	40,000
December 1986	20,000	30,000
	20,000	30,000
January 1987	20,000	30,000

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-158
LICENSE NO. 51306-21
OAL DOCKET NO. CCC 6-89
ORDER NO. 90-2-10

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

Complainant,

v.

LEONARD GRATE,

Respondent.

ORDER

A hearing 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 January 10, 1990,

IT IS on this 24th day of January 1990, ORDERED that the initial decision is rejected for the following reasons:

The ALJ erred in dismissing the complaint as moot due to the expiration of the respondent's license. When the DGE filed its complaint and the respondent requested a hearing his license was valid. Mere expiration of the credential does not vitiate the Commission's need to determine the respondent's qualifications for licensure, especially considering that he in no way abandoned his request for a hearing and he repeatedly expressed his desire to defend against the charges which had been levied against him.

IT IS FURTHER ORDERED that this matter is remanded to the OAL for a hearing on all issues.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 006-89
AGENCY DKT. NO. 85-158
(CCC 3766-88 ON REMAND)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
LEONARD GRATE,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Leonard Grate, the respondent, pro se

Record Closed: November 9, 1989 Decided: November 16, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Leonard Grate's casino employee license no. 51306-21, pursuant to N.J.S.A. 5:12-90 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's license by reason of its

contention that the respondent had been convicted of a criminal offense which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4) (now section 86c(2)), and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The respondent contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The respondent had obtained a casino employee license from the Commission so he could be employed as a security officer at the Sands Hotel and Casino. By complaint to the Commission, filed April 22, 1985, the Division objected to the respondent's continued licensure, asserting that the respondent had committed the offense of theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, which is a disqualifying offense under section 86c(4) (now section 86c(2)). The Division also objected pursuant to section 89b(2). Based upon the complaint, the Commission notified the respondent on April 23, 1985, that he had the right to a hearing, and that failure to respond within 15 days could result in his license being revoked (P-4). On July 19, 1985, the Commission issued an order deferring action on the Divison's application for the suspension of the respondent's casino employee license until resolution of the criminal proceedings (P-3). By application dated May 3, 1988, which was received by the Commission on May 9, 1988, the respondent requested a hearing. On May 16, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on May 23, 1988, 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. Also by letter dated May 16, 1988, the Commission notified the respondent that it had transmitted the case to the Office of Administrative Law for a hearing and informed the respondent that his casino employee license had expired in May 1987 (P-2).

On September 27, 1988, the Office of Administrative Law notified the parties that a prehearing conference was to be held on October 18, 1988, at 1:30 p.m. at the Office of Administrative Law, Atlantic County Civil Courthouse, third floor, 1201 Bacharach Boulevard, Atlantic City, New Jersey.

On the scheduled date, the respondent failed to appear. Ten days have passed from the scheduled hearing date, and during that period, the respondent did not contact

the Office of Administrative Law to offer any explanation for the nonappearance. As a result, on October 28, 1988, Administrative Law Judge Stephen W. Thompson concluded that the respondent no longer sought to defend this matter and issued an Initial Decision for the respondent's failure to appear at the scheduled prehearing conference in which he granted the Division's requested relief.

The Commission considered Judge Thompson's Initial Decision at its public meeting held on November 30, 1988. At that time, the respondent appeared at the meeting, completed another hearing request form, and requested another opportunity for a hearing. The Commission granted this request, and by order dated December 1, 1988, the Commission remanded the case to the Office of Administrative Law for a hearing on all issues. On December 1, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on January 3, 1989, 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 in the matter was held before me on June 22, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he had been convicted of a violation of N.J.S.A. 2C:20-3, theft by unlawful taking from his employer, the Sands Hotel and Casino.

B. Whether respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

A hearing was held on November 9, 1989, in the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey, after which the record was closed.

MOTION

Prior to presenting evidence on the merits of the case, the Division moved to dismiss the case as the matter was moot and there was no longer any subject matter jurisdiction in the case. On April 22, 1985, the Division filed a complaint against the

respondent's casino employee license no. 51306-21. On July 19, 1985, the Commission deferred action on the complaint until after resolution of the then pending criminal proceedings. Those proceedings resulted in the respondent's conviction later in 1985. Thereafter, the respondent briefly worked at various casinos. In May of 1987, the respondent failed to renew his casino employee license, and his license expired. To this date, he has not renewed his license, nor has he made application to the Commission for the issuance of a new license. This case was originally transmitted to the Office of Administrative Law on May 16, 1988. This was three years after the complaint had been filed and one year after the license had expired. As such, the Division argues that there no longer exists any subject matter jurisdiction in this case, there is no longer any case in controversy, and that the matter is moot. The Division therefore moves that the matter be dismissed without prejudice.

In Super Tire Engineering Co. v. McCorkle, 469 F.2d 911, (3rd Cir. 1972) cert. granted 94 S.Ct. 128, 414 U.S. 817 38 L.Ed.2d 50, rev'd. 94 S.Ct. 1694, 416 U.S. 115, 40 L.Ed.2d 1, on remand 412 F.Supp. 192, aff'd. 550 F.2d 903, cert. den. 98 S.Ct. 106, 434 U.S. 827, 54 L.Ed.2d 86, rehearing den. 98 S.Ct. 753, 434 U.S. 1025, 54 L.Ed.2d 773, the Court stated that the:

> four concerns that the Supreme Court addresses in terms of mootness are: that some sort of judicial decree be possible, that the parties remain in a posture sufficiently adverse to insure effective litigation, that the issue in contention continue to be concrete, and that the issue not be one that will recur and yet be unreviewable.

The Court further stated that:

> One who has been injured but will be impaired only in the future if certain speculative contingencies come to pass can no longer properly pursue the litigation.

In Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976), the court stated that "questions that have become moot or academic prior to judicial scrutiny generally have been held to be an improper subject for judicial review," and that "courts will not decide cases in which the issue is hypothetical, a judgment cannot grant effective relief, or the parties do not have concrete adversity of interest." Actions may be brought only if there is a bona fide controversy between the parties. See, Clark v. Degnan, 163 N.J. Super. 344 (Law Div. 1978).

In this case, a judgment cannot grant effective relief and the parties do not have concrete adversity of interest. The respondent no longer is the holder of a casino employee license and it is merely speculative whether or not he will apply for a license in the future. This is especially true since it has been two and one-half years since his license expired. As he no longer holds a casino employee license, there is no license which the Commission can revoke, and since there is no application for a license pending before the Commission, there is no case in controversy or subject matter jurisdiction presently before the Commission at the present time. As such, this case is moot.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITHOUT PREJUDICE.**

This recommended decision may be adopted, 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, 1989
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

11/20/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 21 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Casino Control Commission computer print-out of casino employees who failed to renew their licenses in May 1987

P-2 Casino Control Commission letter, dated May 16, 1988

P-3 Casino Control Commission order, dated July 19, 1985

P-4 Casino Control Commission letter, dated April 23, 1985

For the Respondent:

None

WITNESSES

For the Petitioner:

None

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-203
OAL DOCKET NO. CCC 1108-88
ORDER NO. 90-6-10

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant,	
v.	ORDER
GREATE BAY HOTEL AND CASINO, INC, t/a THE SANDS HOTEL AND CASINO OF ATLANTIC CITY AND RONALD A. ZOBY, Respondents.	

Proceedings having been conducted in the Office of Administrative Law (OAL); and the administrative law judge having filed two initial decisions, one on February 15, 1989, and the other, following a remand, on September 27, 1989; and exceptions and replies to exceptions having been filed; and the Commission having considered the entire record of this matter at its public meetings of December 20, 1989, and February 7, 1990,

IT IS on this 12th day of March 1990, ORDERED that, for the reasons stated in the record on February 7, 1990, the initial decisions are modified as follows:

1. These conclusions of the ALJ are hereby adopted:

   (A) Ronald A. Zoby's practice of establishing gambling partnerships does not contravene the Casino Control Act or Commission regulations;

   (B) Zoby performed the duties and functions

of a general cashier in violation of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.11(c)(9), -1.11(g), and -1.15, by accepting and maintaining cash deposits for a patron and violated the provisions of N.J.A.C. 19:45-1.24, by failing to prepare written accounts for the receipt and disbursement of these funds;

(C) Zoby's practice of cashing checks to enable a patron to repay gambling debts to other patrons violated N.J.S.A. 5:12-101(a), -101(b) and N.J.A.C. 19:45-1.25;

(D) Greate Bay is liable for all of the violations committed by respondent Zoby;

2. These conclusions of the ALJ are rejected:

(A) Zoby's use of his credit account to obtain gaming chips for junket patrons violated N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 and -1.27 and that this conduct also involved the exercise of approval authority with regard to the authorization of credit in violation of N.J.S.A. 5:12-102(1)(2); and

IT IS FURTHER ORDERED that for the reasons stated in the record that penalties be assessed for the violations found as follows:

(1) For respondent Zoby: $500 for each of the nine occasions on which he performed the duties of general cashier, $500 for each of the nine occasions on which he failed to prepare written accounts for the receipt and disbursement of funds, and $750 for each of the 18 occasions on which he cashed checks for a patron, for a total monetary penalty of $22,500; and

(2) For respondent Greate Bay: $1,000 for each of the nine occasions on which Zoby performed the duties of a general cashier, $1,000 for each of the nine occasions on which Zoby failed to prepare written accounts for the receipt and disbursement of funds, and $1,500 for each of the 18 occasions on which Zoby cashed checks for a patron for a total monetary penalty of $45,000; and

IT IS FURTHER ORDERED that the civil penalties assessed herein shall be due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1108-88

AGENCY DKT. NO. 88-203

(ON REMAND)

PART II

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

v.

GREATE BAY HOTEL AND
CASINO., t/a THE SANDS
HOTEL AND CASINO OF
ATLANTIC CITY, AND
RONALD A. ZOBY,
LICENSE NUMBER 44316-21,
Respondents.

Kevin F. O'Toole, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Roberto Rivera-Soto, Esq., Vice President & Corporate Counsel, for respondent Sands Hotel and Casino

Wayne R. Rosenlicht, Esq., for respondent Ronald A. Zoby (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

Record Closed: August 1, 1989 Decided: September 22, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on January 19, 1988 and an amended complaint on May 17, 1988 seeking sanctions against the casino license held by the Sands Hotel and Casino (Sands) and the junket enterprise license held by Ronald A. Zoby.

PROCEDURAL ASPECTS

The matter was transmitted from the Commission to the Office of Administrative Law (OAL) on February 17, 1988, 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. Subsequent to a prehearing conference held by Administrative Law Judge Steven L. Carnes on May 2, 1988, respondent Sands, joined by respondent Zoby, propounded and served its Notice of Motion to Dismiss or, in the alternative, for Summary Disposition. Thereafter, the parties agreed that issues of liability were ripe for summary disposition and were to be severed from issues of penalty, if any. Therefore, subsequent to the parties submission of briefs of law with regard to the liability issues, this administrative tribunal, on February 10, 1989, issued its Partial Initial Decision - Summary Decision to the Commission for its consideration. The Commission, by way of an order dated March 14, 1989, remanded the matter to the OAL with instructions that the undersigned render an initial decision with respect to penalty and thereafter resubmit the matter to the Commission for its review and determination, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.1.

As a consequence of the Commission's remand, respondents requested and were granted a hearing on the penalty phase of the instant matter. The penalty hearing was held on May 8, 1989. Thereafter, the parties were granted leave to submit post-hearing memoranda and the record was considered closed on August 1, 1989. An extension for the execution of this portion of the decision was requested and granted.

LEGAL CONCLUSIONS WITH RESPECT TO ISSUES OF LIABILITY

To recapitulate and summarize the conclusions reached by the undersigned in the partial initial decision dated February 10, 1989 with regard to the issues of liability, reference is made to the Division's letter brief dated June 29, 1989 wherein it set forth the following at pages 4 and 5:

> **Chip Transfer Counts (Counts I and V in the Division's Complaint)**
>
> 1. Respondent Zoby violated N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.27 by using his casino credit account to draw against for the purpose of transferring gaming chips to junket participants. Decision, at 45.
>
> 2. Respondent Sands, by its conduct of commission and/or omission, did permit, allow and facilitate Zoby's violations of N.J.A.C. 19:45-1.25, N.J.A.C. 19:45-1.27 and, therefore, was negligent in its duty to enforce the conditions of N.J.S.A. 5:12-101, as incorporated under N.J.S.A. 5:12-102g and, therefore is strictly liable for Zoby's violations. Decision, at 45.
>
> **Credit Issuance Counts (Counts II and VI)**
>
> 1. Respondent Zoby violated N.J.S.A. 5:12-1021. (2) by his conduct which "circumvented the strict regulation governing casino credit and substituted himself as the approving authority for the issuance of casino credit." Decision, at 48.
>
> 2. Respondent Sands, by allowing and permitting respondent Zoby's conduct as described above, is also in violation of N.J.S.A. 5:12-1021. (2), pursuant to N.J.S.A. 5:12-102g. Decision, at 48.
>
> **Check Cashing Count (Count III)**
>
> 1. Respondent Zoby violated N.J.A.C. 19:45-1.25 when, on one or more occasions, he cashed the late Albert Miller's personal and business checks for the purpose of repaying debts incurred as a consequence of Miller's gaming activity as a player at the Sands. Decision, at 46.
>
> 2. Respondent Sands is vicariously liable for Zoby's conduct where, as here, Zoby was performing as

an agent of and in the Sands behalf when he violated the terms of N.J.A.C. 19:45-1.25. Decision, at 46-47.

3. Zoby's conduct in cashing Miller's personal and business checks constitutes a violation of N.J.S.A. 5:12-101a. and b., to which flows vicarious liability of respondent Sands under the doctrine of respondeat superior. Decision, at 47.

Cash Holding Count (Count IV)

1. Respondent Zoby violated the provisions of N.J.S.A. 5:12-101b, N.J.A.C. 19:45-1.11(c) 9 and (g), and N.J.A.C. 19:45-1.15 when he received and maintained cash deposits from Albert Miller. Decision at 49.

2. Respondent Zoby violated the provisions of N.J.A.C. 19:45-1.24 wherein he failed to prepare the required documentation and perform the required procedures to account for the receipt of cash deposits from the late Albert Miller. Decision, at 49.

3. As a consequence of Zoby's violations and his employment by the Sands Hotel/Casino, it also is held to be in violation of the same statutes and regulations. Decision, at 49.

UNRESOLVED LIABILITY ISSUE - "GAMBLING PARTNERSHIPS"

The Division observes that respondent Zoby offered two explanations for his "chip transfer" activity; i.e., that the chip transfers were reimbursements to junket patrons of cash that the patrons had turned over to Zoby to hold until called for by the patron and, that the chip transfers were given to various junket patrons for the purpose of establishing "gambling partnerships" to allow Zoby to gamble through the junket patron. Respondent Zoby contends that his maintenance of "gambling partnerships" with junket patrons is lawful. The Division contends that Zoby's chip transfer activity, under either explanation, violated N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 and N.J.A.C. 19:45-1.27. The Division asserts that a resolution of the issue regarding "gambling partnerships" entered into between a licensed junket representative and a junket patron is necessary and appropriate at this juncture.

THE DIVISION'S POSITION

The Division observes that Zoby admitted to the use of his personal casino credit account at the Sands on at least 62 occasions, from June 30, 1984 through December 31, 1987, to obtain gaming chips and thereafter provide the gaming chips to various junket participants in order that they could engage in gaming activity at the Sands. At the hearing held on May 8, 1989, Zoby testified, among other things, that subsequent to his sworn investigative interview conducted by the Division on May 22, 1987, he discontinued the practice of accepting and holding cash of his junket patrons. However, Zoby, as well as others, testified that he continued to engage in chip passing activity, using his credit line account, in order to form gambling partnerships with his junket patrons. The herein record demonstrates, through the testimony of Ronald Grablewski, that Zoby transferred gaming chips to Grablewski on the night before the hearing held on May 8, 1989, for the purpose of establishing and engaging in a gambling partnership. Zoby testified that since the beginning of 1989, the majority of counter checks he has negotiated at the Sands have been issued to him for the express purpose of obtaining gaming chips for the use in gambling partnerships with his junket patrons and that he seldom gambles on his own. The gambling partnership arrangement is as follows: (1) Zoby obtains gaming chips by signing for a counter check against his casino credit account; (2) Zoby gives the chips to his partner - a patron on the Zoby junket (on May 7, 1989, Zoby gave $2,500 to junket patron Ronald Grablewski); (3) The junket patron places wagers at the table games with the patron's and Zoby's chips; (4) In the event the junket patron's wagers result in a net loss, Zoby receives no payment; however, (5) If the junket patron's wagers result in net winnings, Zoby receives one-half of the net winnings as his proportionate division of the winnings. Zoby, an avid gambler, contends that he is unable to gamble during his junket excursions to the Sands because of the junket patron demands placed on his time.

The Division observes that section 100n of the Casino Control Act permits a junket representative, among other casino employees, to "wager at any game in any casino in this State." The Division further observes that the general rule is that it is unlawful for any casino key employee and any casino employee to wager at any game in this State except, among others, junket representatives. The Division asserts that the relevant rules of statutory construction indicate that exceptions to a general

rule contained within a statute are to be strictly but reasonably construed, consistent with the manifest reason and purpose of the law. Service Armanent Co. v. Hyland, 70 N.J. 550 (1979).

The Division contends that the act of "wagering" requires a personal affirmative act by the player at the game to place a bet on the appropriate areas of gaming tables. See; e.g. N.J.A.C. 19:47-1.3(b) for Craps; N.J.A.C. 19:47-2.3(d) for Blackjack; N.J.A.C. 19:47-3.2(c) for Baccarat; and N.J.A.C. 19:47-5.1(a) for Roulette and Big Six Wheels ('Wagers ... shall be made by placing game chips or plaques on the appropriate areas of the [name of gaming table]"). The Division asserts that the manifest reason and exception contained in N.J.S.A. 5:12-100n regarding junket representatives was to allow these individuals to personally wager at authorized games. Section 100n of the Act does not authorize a junket representative to "gamble" vicariously through a junket patron through a so-called "gambling partnership" arrangement where the junket representatives chips are "wagered" by his junket patrons. Respondent Zoby is not credited with a player rating as a consequence of this chip transfer even when the chip transfer effectuates a "gambling partnership" arrangement. Rather, the junket patron is credited with the "wagering" on the player rating form for that patron; thus, creating a disruption of the proper "paper trail."

The Division argues that its position regarding "gambling partnerships" as applied by Zoby is further supported when consideration is given to the language of N.J.S.A. 5:12-101b which authorizes a casino licensee to accept a check "from any person to enable such person to take part in gaming activity as a player (emphasis added at page 13, Division's letter brief). It asserts that when Zoby executes a counter check at the gaming tables of the Sands and the Sands accepts said check in exchange for gaming chips, the intent of the statute which authorizes such "credit" is to enable Zoby, individually, to place wagers at the gaming tables as a player - not to enable his junket participants to do so in the context of a "gambling partnership."

The Division contends that the total of 62 documented chip transfers employed by Zoby, regardless of his explanation, constitutes a violation of the credit provisions of the Act and the Commission's regulation. To the extent that this issue was not fully addressed in the Initial Decision dated February 10, 1989, it should now be resolved.

RESPONDENT ZOBY'S POSITION

Respondent Zoby contends that the "gambling partnership" question is not an issue before this tribunal nor has it ever been. Zoby asserts that when the Division took his sworn statement, Deputy Attorney General O'Toole advised Zoby that Zoby should stop holding junket patron's funds and returning the patron's funds in the form of gaming chips; Zoby complied with the advise and immediately stopped the practice. Moreover, Zoby argues, at no time did the Division even suggest to Zoby that his engagement in gambling partnerships was in anyway improper or that he should cease such activity. Zoby contends that if a licensee cannot rely upon the representations of counsel of the Division but, rather, have that same counsel "ambush" the licensee later in a proceeding with a question that is not at issue, then the regulatory system serve no one's best interests. Consequently, respondent Zoby will not address the merits of the gambling partnership issue because it was and is not an issue before this administrative tribunal.

RESPONDENT SANDS' POSITION

The Sands asserts that the testimony at the penalty hearing held on May 8, 1989, clearly demonstrates the facts alleged by the Division as being "chip transfers" were, in fact, gambling partnerships between Zoby and his various junket participants. The alleged unlawful "chip transfers" were not the result of Zoby drawing on his credit line solely for the purpose of giving the chips to one of his patrons. Rather, Zoby drew on his credit line to engage in gaming, an act which Zoby is statutorily permitted to do with no unlawful activity occurring.

The Sands contends that notwithstanding the clear impact of the evidentiary proofs, the Division argues that gambling partnerships are somehow unlawful if one of the participants is a licensed junket representative. It maintains that the Division makes this argument without the benefit of any authority therefore. It argues that it remains for the Legislature to give its instruction that junket representatives cannot lawfully engage in gaming activity. However, for as long as Section 100n of the Act specifically exempts a junket representative from the category of persons prohibited from gaming in the casinos, it remains exclusively within the province of the Legislature, not the Executive branch of government, to restrict the gaming

activities of a junket representative. In the event the Division seeks to advance the position that chip transfers for the purpose of engaging in a gambling partnership by a junket representative is somehow illegal, it has raised the issue in the wrong forum and the Division should address its concerns to the Legislature; the proper forum for resolution of the issue. Consequently, no penalty is appropriate here on either Zoby or the Sands.

DISCUSSION AND CONCLUSIONS

There is no question that respondent Zoby, a licensed casino key employee and agent of the Sands, is privileged to engage in gaming activities within the casinos under the direction and control of the Act and the Commission. N.J.S.A. 5:12-100n. Concomitant with the privilege to gamble is, presumably, the privilege for Zoby to establish a line of credit for the purpose of participating in the licensed gaming activity. Having established credit with the Sands, the question now is; whether Zoby's use of his credit to transfer chips therefrom to another individual for the purpose of establishing a gambling partnership is a violation of the credit provision of the Act and the Commission's regulations? N.J.S.A. 5:12-101; N.J.A.C. 19:45-1.27.

The record demonstrates that immediately subsequent to his sworn interview by the Division on May 22, 1987, Zoby discontinued the practice of receiving money from his junket patrons and reimbursing the patrons with chips drawn from his credit line with the Sands. However, he thereafter continued to transfer chips from his credit account to establish and engage in gambling partnerships with junket patrons.

Having previously found and concluded that the practice of Zoby receiving money from junket patrons and using his credit account as a "bank" to subsequently reimburse the patrons with chips to be in violation of the Act and the regulations, I find no such violation with respect to the use of Zoby's credit account for the purpose of engaging in a gambling partnership. (See, Initial Decision at pp. 43-45). Notwithstanding that such chip transfer may disrupt a "paper trail" of credit transactions, the fact remains that Zoby has a statutory right to "wager at any game in any casino in this State." N.J.S.A. 5:12-100n. The manner in which Zoby elects to wager; i.e., on his own behalf or through a proxy or partner, is neither prohibited

nor proscribed by the Act or regulations. It is not within the province of this administrative tribunal to defeat the purpose of the statute which permits Zoby the privilege of gambling. Accardi v. Mayor & Coun. of No. Wildwood, 145 N.J. Super. 532, 545 (Law Div. 1976); Falcone v. Branker, 135 N.J. Super. 137, 153 (Law. Div. 1975); State v. Line, 14 N.J. 446 (1954); State v. Gill, 47 N.J. 441 (1966). As our Supreme Court said in Kingsley v. Hawthorne Fabrics, Inc. 41 N.J. 521 (1964) that:

> An administrative agency may not under the guise of interpretation extend a statute to include persons not intended, nor may it give the statute any greater effect than its language allows (citation omitted) at p. 528.

Neither may this administrative tribunal exclude persons intended nor give the statute any lesser effect than its language allows. Kingsley.

Accordingly, I **CONCLUDE** that respondent Zoby's transfer of gaming chips from his credit account to another person for the purpose of establishing and conducting a gambling partnership is consistent with the meaning of section 100n of the Act and does not violate N.J.S.A. 5:12-101 or N.J.A.C. 19:45-1.27.

PENALTY CONSIDERATIONS

THE DIVISION'S RECOMMENDATIONS

The Division, citing the Commission's authority to impose sanctions for violations of the Act or its regulations under section 129 of the Act, recommends the following penalties to be imposed upon respondents Zoby and the Sands:

1. The suspension of Zoby's casino key employee license for a term of two (2) years; and

2. A monetary fine against Zoby in the range of $120,000 to $175,000; and

3. An order of restitution to the estate of the late Albert Miller in the amount of $127,500; and

4. A monetary fine against the Sands in the range of $350,000 to $450,000.

The Division asserts that its recommended penalties are justified due to the severity of the offenses committed by Zoby and the circumstance by which the Sands permitted the offenses to occur. In support of its penalty assessments, the Division relies, in part, upon the findings and conclusions reached by this tribunal with respect to the charged offenses.

ARGUMENTS OF THE PARTIES WITH RESPECT TO PENALTY

Zoby License Suspension

The Division asserts, among other things, that given the nature and scope of the violations found against respondent Zoby, an order to revoke Zoby's casino key employee license, pursuant to N.J.S.A. 5:12-129(1), is a plausible sanction to the serious and unjustified deviation from the strict regulation and control of the casino credit and cash transactions. The Division, however, recommends a penalty short of revocation; i.e., a suspension of Zoby's license for a period of two (2) years, pursuant to N.J.S.A. 5:12-129(3).

Respondent Zoby argues, among other things, that the Division misapplies the statute, N.J.S.A. 5:12-129, where the Division suggests that this tribunal has the authority to suspend Zoby's license thereunder. He contends that N.J.S.A. 5:12-129(3) actually permits the suspension of a license "of any person pending hearing and determination, in any case in which license or registration revocation could result." In the instant matter, Zoby has been operating as a junket representative since the filing of the Division's original complaint and there has been no temporary suspension of his license. Respondent Zoby argues that a revocation of his license would not be permitted by law in this case. He has not been convicted of any criminal offense nor has he committed any offense which would disqualify him from holding a license N.J.S.A. 5:12-129(1). Nor has Zoby willfully and knowingly violated any order of the Commission N.J.S.A. 5:12-129(2). Zoby submits that the law does not even permit a suspension of his license. If the terms of N.J. S.A. 5:12-129 are examined carefully, he contends, it is apparent that a suspension of his license is not permitted by law in these circumstances.

The "Chip Transfer" Counts (Counts I and V)

The Division maintains, among other things, that it documented 62 instances of chip transfers by Zoby to junket participants. Zoby stated that the transfers reflect reimbursements of cash he held for various junket patrons, Albert Miller, Will Walker, Willard Edwards and Jules Siman. At the hearing held on May 8, 1989, Zoby identified Albert Miller, William Runnells, Will Walker and Elliot Gilmer as individuals who had provided Zoby with money at the beginning of junket trips where Zoby was to hold the money until requested by the individual during the course of the junket trip. The Division asserts that the six individuals noted above account for 35 of the 62 chip transfers and $177,500 of the $295,000 in total chip transfers by Zoby.

The Division contends that the violations of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.27 are serious where credit transactions conducted by a casino licensee, its employees and agents, are to be among the most strictly regulated aspects of casino operations. Playboy-Elsinore Associates v. Strauss, 189 N.J. Super. 185 (Law Div. 1983); In the Matter of the Petition of Adamar of New Jersey, Inc.., 222 N.J. Super. 457 (App. Div. 1988); State of New Jersey v. Boardwalk Regency Corp., 11 N.J.A.R. 29. It asserts that by his actions, Zoby undermined the strict regulation of casino credit, altered the normal "paper trail" of credit transactions and facilitated a misleading record of player ratings associated with his counter check issuances.

The Division observes that N.J.S.A. 5:12-129(5) authorizes monetary fines against individual licensees up to $10,000 per violation and against casino licensees up to $50,000 per violation. Consequently, the Division recommends that a monetary fine in the range of $35,000 to $50,000 be assessed Zoby for Counts I and V of its Amended Complaint.

The Division recommends that the Sands be fined in the range of $75,000 to $100,000 for the violations associated with Counts I and V of its Amended Complaint. In support of its recommendation, the Division asserts that the Sands laissez faire approach to the open and visible conduct of junket representative Zoby contributed to the violations and, therefore, should be severely penalized.

Respondent Zoby contends that the Division is seeking a total penalty in excess of 1.3 million dollars. The major portion of the penalty would be imposed against Zoby by way of the proposed suspension of his casino key employee license for a term of two years. He contends that the Commission has not even remotely approached this level of penalty for violations of regulations, which here involves significantly less money, and would set a completely new standard of penalty; particularly for conduct which was unintentional. Respondent Zoby cites and summarizes a variety of cases where the Commission imposed penalties and fines against casino licensees for violating its accounting and internal control regulations as found at N.J.A.C. 19:45-1.1 et seq. State v. Resorts International Hotel, Inc., Laura Shope, Charles McCallion, Chester Calvin Mitchel, William Gallion and Oscar Dykes, OAL DKT. No. CCC 1427-84, Agency Dkt. No. 83-388, Initial Decision dated October 11, 1984, Commission Decision dated June 14, 1985; State v. Boardwalk Regency Corp., 11 N.J.A.R. 29, Initial Decision dated June 8, 1982, Commission Decision dated January 4, 1983; State v. Greate Bay Hotel & Casino, Inc. et al., OAL DKT. No. CCC 5460-83, Agency Dkt. No. 83-17, Initial Decision dated March 26, 1984, Commission Decision dated July 25, 1984; State v. Playboy-Elsinore Associates, et al., OAL DKT. No. CCC 4557-83, Agency Dkt. No. 83-16, Commission Decision dated October 10, 1984. In each of the above cited matters, intentional violations of the Commission's regulatory scheme were committed and each violation involved considerable amounts of money. Zoby maintains, moreover, that the fines and penalties assessed for these intentional transgressions represent only a small fraction of the penalty now recommended to be imposed against him. Zoby contends that the recommended penalties are wholly inappropriate and that he should not be subjected to a penalty of more than $10,000 in total. To do otherwise would be to impose a punitive penalty rather than a civil penalty which is supposed to punish his alleged misconduct and deter future violations.

Respondent Zoby further argues that when he was advised by the Division that his holding of funds for his patrons and then returning those funds in the form of chips was improper, he immediately ceased all such activity.

The respondent Sands observes that the testimony of the hearing held on May 8, 1989, clearly and unequivocally demonstrate that the chip transfers were, in fact, gambling partnerships between Zoby and various of his junket participants. Therefore, the chip transfers were not the result of Zoby drawing on his credit line

solely for the purpose of giving the chips to one of his patrons but, rather, were for the purpose of allowing Zoby to engage in gaming; an act which he is statutorily permitted to do. Inasmuch as no unlawful activity occurred between Zoby and his gambling partners, therefore, no penalty is appropriate here on either Zoby or, vicariously, the Sands.

The Credit Issuance Counts (Counts II and VI)

The Division asserts that Zoby violated N.J.S.A. 5:12-102 1 (2) through the subterfuge of processing counter checks on his own approved casino credit account. By so doing, Zoby exercised approval authority with regard to the authorization and issuance of casino credit by funneling gaming chips to persons who had no casino credit accounts of their own, to persons who had been denied casino credit, and to at least one person who had suspended casino credit privileges. The Division contends that Zoby's conduct represents a risk to the integrity of the casino credit system and, therefore, recommends that a monetary fine in the range of $35,000 to $50,000 be imposed against Zoby and a monetary fine in the range of $75,000 to $100,000 be imposed against the casino licensee Sands.

Respondent Zoby contends that although the Division asserts that Zoby's conduct created a great risk to the public and to the integrity of gaming patrons, there has never been one statement of substantial facts to show how Zoby's conduct in any way posed a risk to the public or to the integrity of the gaming operations. Respondent Zoby testified that the late Albert Miller was his friend. On one occasion, Zoby specifically requested that the Sands not issue credit to Miller, since Zoby believed that it not be in Miller's best interest to have casino credit. While it would have been in Zoby's best financial interest for the Sands to issue as much credit as possible to Miller, Zoby went out of his way to make sure that one of his friends/patrons was not given access to the very money which would have increased Zoby's own profits as a junket representative.

It is noted here again that when Zoby was advised by the Division of the impropriety of collecting money from patrons at the beginning of a junket trip and reimbursing the patrons with chips at the gaming tables, Zoby immediately stopped the practice.

The Sands maintains that no penalty is appropriate on either Counts II and VI of the Division's Amended Complaint. These counts incorrectly allege that Zoby backhandedly engaged in the issuance of credit by drawing on his credit line and providing chips to the patron. These counts also fail to account for the lawful gambling partnerships for which Zoby's credit line was used. Consequently, the allegations cannot be sustained and, therefore, no penalty should be imposed.

The Check Cashing Count III

The Division contends that Zoby engaged in the practice of cashing personal and business checks of the late Albert Miller with the knowledge that the check cashing allowed Miller to pay gambling loans Miller had incurred from other junket patrons. As a consequence of Zoby's activity, this tribunal found that Zoby had violated N.J.A.C. 19:45-1.25 and N.J.S.A. 5:12-101a and b. The Division asserts that Zoby admitted that 18 of 30 personal and business checks referenced in its Amended Complaint were cashed by Zoby for the purpose of defraying Miller's gambling debts. This involved $68,500 in personal checks and $59,000 in business checks cashed by Zoby for Miller which totals $127,500 in cashed checks to facilitate Miller's gaming activity.

The Division contends that the seriousness of these violations is reflected in the fact that Zoby was fully aware that Miller's checks represented losses Miller incurred at the gaming tables of the Sands from funds he had borrowed from other junket participants. The cashing of personal and business checks by Zoby enabled Miller to gamble away monies beyond his expected losses. This is precisely the type of situation that the credit provisions of the Act and the Commission regulations were designed to avoid.

The Division observes that Zoby holds a junket representative license to bring persons to Atlantic City who are willing to gamble. It also observes that to hold a casino license or individual license is a privilege and not a right. N.J.S.A. 5:12-1b(8). The more Zoby's junket participants gamble, the more "productive" Zoby is as a junket representative. Zoby is permitted to observe and monitor his junket patron's play pursuant to N.J.S.A. 5:12-29.2 and N.J.A.C. 19:49-2.1(a), however, he is not permitted to facilitate the patron's gaming activity by acting as a banker to cash personal and business checks to defray gambling loans. It also observes that Zoby

earned $300,000 per year since 1985 and that he currently earns in excess of $500,000 per year as a junket representative for the Sands. The Division argues that Zoby's "productivity" should not be enhanced as a consequence of his violating the law.

The Division recommends that respondent Zoby be ordered to pay restitution to the estate of the late Albert Miller in the amount of $127,500, pursuant to N.J.S.A. 5:12-129 (6), which represents the value of the checks unlawfully cashed by Zoby for the late Albert Miller. The Division also recommends that a monetary fine in the range of $75,000 to $100,000 be imposed on the Sands for the 18 violations associated with Count III of its Amended Complaint.

Respondent Zoby contends that the Division is attempting to establish a remedy for the heirs of the late Albert Miller which the Superior Court of New Jersey, Law Division has rejected and dismissed for the heirs failure to state a claim upon which relief can be granted. (See, Exhibit "A" Order by Michael R. Connor, J.S.C., February 7, 1989). Respondent Zoby asserts that it is undisputed that Miller gambled either with his own money which he brought to Atlantic City or with money he borrowed from persons other than Zoby. In effect, the Division is seeking restitution to the heirs for money which belonged to Miller, which he gambled of his own volition and which was never loaned by Zoby to Miller. Zoby objects to any penalty being imposed on these grounds.

The respondent Sands also cites the Superior Court of New Jersey decision wherein the court dismissed the action brought by the executors of Miller's estate against Zoby and the Sands. The Court determined that no cause of action lies for the recovery of paid gaming losses, therefore, no liability attaches to Zoby or the Sands for Miller's gambling losses. Notwithstanding that the executors of the estate of Miller have sought leave to appeal the court's ruling, the Sands submits that this tribunal must stay its hand in favor of the disposition of the Superior Court. Under such circumstances, no penalty is appropriate for either Zoby or the Sands.

The Cash Holding Count (Count IV)

The Division observes that the record demonstrates that respondent Zoby would receive cash deposits from various junket participants at the commencement

of his junket trips. Subsequent to arrival at the Sands, Zoby would process periodic refunds of those deposits through the gaming chip transfers he negotiated at the gaming tables using his personal credit account at the Sands. Respondent Zoby maintained no records or documentation to memorialize the receipt of cash from his junket patrons. Nor did he keep any records of the reimbursements of the cash to the patrons through the gaming chip transfers.

This tribunal, having considered the undisputed facts in this matter, concluded that Zoby violated the provisions of N.J.S.A. 5:12-101b, N.J.A.C. 19:45-1.11(c)9 and (g) and N.J.A.C. 19:45-1.15. In addition, it was concluded that Zoby violated the provisions of N.J.A.C. 19:45-1.24 wherein Zoby failed to prepare the required documentation and to perform the required procedures to account for the receipt of cash deposits from the late Albert Miller.

The Division contends that its investigation reveals that Miller accompanied Zoby to the Sands on nine (9) junket trips between June 30 and August 23, 1986. It asserts that during each of those junket trips, Miller was the recipient of gaming chip transfers from Zoby at the Sands gaming tables. The Division contends that Zoby's conduct seriously undermined the integrity of the regulatory process in two respects: First, the regulatory scheme of intensive security, surveillance and regulatory oversight over cash transactions was ignored; and second, the obligation to completely and accurately maintain a full "audit trail" of gaming transactions engaged in between the gaming public and those entities and individuals licensed under the Act was ignored.

For the nine (9) junket trips identified by the Division involving the late Albert Miller, the Division recommends a monetary penalty in the range of $35,000 to $50,000 be imposed against Zoby for violations of N.J.S.A. 5:12-101b, N.J.A.C. 19:45-1.11(c) 9 and (g) and N.J.A.C. 19:45-1.15. In addition, for Zoby's failure to maintain records of the receipt and disbursement of the cash deposits in violation of N.J.A.C. 19:45-1.24, the Division recommends a monetary penalty in the range of $20,000 to $25,000.

The Division observes that this tribunal also held the Sands to be in violation of the same statutes and regulations as cited above. The Division asserts that the Sands' responsibility for Zoby's conduct cannot be overstated. The Legislature has

provided clear and unequivocal language that the sensitivity of junket representative activity to the integrity of the legalized gaming activity in this State is so integral to the process that casino licensees must and are to be held liable for the conduct of junket representatives; even in the absence of the casino licensee having actual knowledge of the violative conduct.

The Division, therefore, recommends a civil fine in the range of $75,000 to $100,000 be imposed against the Sands for the violations of N.J.S.A. 5:12-101b, N.J.A.C. 19:45-1.11 (c) 9 and (g) and N.J.A.C. 19:45-1.15 and a civil fine in the amount of $50,000 for the violation of N.J.A.C. 19:45-1.24.

Respondent Zoby responds that the violations were unintentional and extraordinarily unique. He argues that it was impossible for him to have even considered that his activities were in any way illegal. Zoby relies upon the testimony of Robert Goldstein, Vice President of Casino Marketing at the Sands and Executive Vice President with Pratt Hotel Corporation wherein Goldstein testified at the penalty hearing on May 8, 1989, that he was an attorney admitted to practice in the Commonwealth of Pennsylvania since 1980 and had been involved in the New Jersey casino industry since 1980. Goldstein testified that it made no sense to him that a junket representative who held cash for a patron as a way of controlling that patron, would make the junket representative into a general cage cashier. Goldstein also testified that it would not occur to him that the use of a personal credit line to draw down chips to give to someone from whom that person was holding cash would turn that person into a credit issuing agency, issuing credit for other people to play with. (Transcript at 40-48). Zoby maintains that if it never would have occurred to an attorney and to someone who has been involved in the casino industry since 1980 that there were violations of the Act and/or the Commission's rules, it certainly could not reasonably be expected to occur to Zoby that he was doing something illegal. In light of these circumstances, and in light of the very technical violations, Zoby submits that only a minimal fine be imposed and that no period of suspension of his license is appropriate.

The Sands, in response to the Division's contentions and recommendations, presents a detailed analysis of the Act's standards for penalties under section 130, which shall be discussed, in part, post.

PENALTY DISCUSSION AND CONCLUSIONS

Section 129 provides the Commission with a variety of sanctions to be imposed for violations of the Act and/or its regulations. The penalties include, among other things; the revocation or suspension of a casino's license or certificate of operation; restitution or cease and desist orders; issuance of letters of reprimand or censure and the imposition of monetary civil penalties. These penalties may be imposed singularly or in combination. In its Second Interim Report, Staff Policy Group on Casino Licensing, (February 17, 1977) the policy group recognized the need for flexible civil sanctions for the enforcement of the provisions of the Act and the regulatory scheme under the Commission. It said, in part, at 54 that, "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." As to monetary penalties, the policy group said, in part, that:

> ... 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 deterrent effect and should also provide a stimulus for effective completion of any disciplinary proceedings. [Id. at 54-55]

The Legislature agreed with the policy group and enacted section 129 of the Act in accordance with its recommendations. The Legislature, in conjunction with section 129, adopted standards as requisite considerations in determining the appropriate sanction to be applied in any disciplinary action brought before the Commission. Those standards, as provided by section 130 of the Act, are as follows:

> 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 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 for such conduct by the licensee or registrant;
>
> d. The prior history of the particular license or registrant involved with respect to gaming activity;
>
> e. The correction 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. The commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.
>
> g. It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself.

Being mindful of the required standards for consideration, proper weight has been applied to the penalties to be imposed upon respondents' as follows:

The Chip Transfer Counts (Counts I and V)

The seriousness of this violation has been demonstrated in the Discussion and Conclusions portion of the Initial Decision dated February 10, 1989, and need not be repeated here. The undisputed facts clearly show that there were 62 documented instances of chip transfer from respondent Zoby to a variety of junket participants in a total amount of $295,000. Six identified individuals, Albert Miller among them, accounted for 35 chip transfers in an amount of $177,500. The Division has credibly established at least 35 chip transfers. The remaining 27 chip transfers, some of which were for the purpose of providing chips to Zoby's gambling partners, will not be considered for penalty due to respondent Zoby's statutory right to gamble at the casinos under the Commission's control.

Having carefully considered the standards pursuant to section 130 of the Act, an appropriate monetary penalty of $1,000 each for the 35 chip transfers is to be imposed against respondent Zoby for his violation of N.J.S.A. 5:12-101 and N.J.A.C.

19:45-1.27. This civil penalty of $35,000 is imposed against respondent Zoby after consideration of the "risk to the public and to the integrity of gaming operations" as a consequence of respondent Zoby's conduct. N.J.S.A. 5:12-130a. Zoby, having set himself up as a repository for his junket participants' funds and, thereafter, reimbursing the patron with gaming chips from his approved credit line became, in effect, a "bank" extending credit outside of the control of the Commission and its regulations. The Commission's regulations establish strict controls and conduct for casino credit which Zoby circumvented; a serious violation.

Consideration is also given to the fact that respondent Zoby's conduct was nor purposeful nor with the knowledge that it was in contravention of the Act and regulations. N.J.S.A. 5:12-130b. Respondent Zoby testified credibly that he was unaware that his conduct was in violation of the Act and regulations. However, such ignorance is no defense but, rather, has been taken into consideration with respect to the imposed penalty. N.J.S.A. 5:12-103g. Consideration was also given to respondent Zoby's unblemished prior history as a licensed junket representative, N.J.S.A. 5:12-103d, as well as the corrective action to cease and desist from taking patrons money after he had been advised of its impropriety by the Division on May 22, 1987. N.J.S.A. 5:12-130e.

Having found and determined the Sands to be strictly liable for Zoby's violations of N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 and N.J.A.C. 19:45-1.27, an assessment of a civil penalty in the amount of $35,000 against the Sands is appropriate here. There is no doubt that the Sands was negligent in its duty to enforce the controlling statutes and regulations. Where, as here, strict compliance with the provisions of the Act and regulations are overlooked and ignored, a serious breach of conduct is extant. The Sands has a continuing duty to assure that all aspects of the Act and regulations are in compliance. To the extent that the Sands observed the chip transfers from Zoby to his junket patrons on at least 35 occasions and took no action to stop the activity, a penalty of $1,000 per transaction is appropriate for a total civil penalty of $35,000 with regards to the Division's Amended Complaint - Counts I and V.

The Credit Issuance Counts (Counts II and VI)

The facts and circumstances here are virtually identical to those with regard to Counts I and V above. Here, respondent Zoby was found to have "circumvented the strict regulation governing casino credit and substituted himself as the approving authority for the issuance of casino credit." Initial Decision, February 10, 1989 at p. 48. An offense such as this is serious where it presents a risk to the integrity of the gaming operations. As stated hereinbefore, the exercise of strict regulation and control over casino credit is essential to the integrity of the casino industry. The Legislature recognized this concept of strict control when it enacted section 101 of the Act. Similarly, the Commission recognized its obligations when it promulgated N.J.A.C. 19:45-1.1 et seq.

This tribunal found that Zoby exercised approval authority to his junket patrons through the subterfuge of processing counter checks against his own approved casino credit account and then transmitting gaming chips to persons who had no casino credit accounts of their own or, alternatively, had been denied or suspended casino credit.

Accordingly, a civil penalty of $1,000 per violation is assessed against respondent Zoby for 35 violations of section 102 1. (2). Thus, the total fine for the violations assessed under Counts II and VI is $35,000.

In consideration of the seriousness of the violations and by allowing and permitting Zoby to engage in approval authority with regard to the issuance of credit, a similar fine of $35,000 is assessed against the Sands.

The Check Cashing Count (Count III)

The record clearly demonstrates that Zoby cashed 30 personal and business checks executed by the late Albert Miller. The facts further demonstrate that 18 of the 30 personal and business checks were cashed by Zoby for the express purpose of defraying Miller's gambling debts, in clear violation of N.J.A.C. 19:45-1.25. The cashing of each of these checks is a separate and distinct violation of the regulations and sections 101a and b of the Act. Accordingly, a penalty of $1,000 per violation is

the appropriate penalty. Therefore, the total fine assessed against Zoby under Count III of the Division's Amended Complaint is $18,000.

Having found and determined that the Sands is vicariously liable for Zoby's improper conduct under the doctrine of respondent superior, a similar fine of $18,000 is assessed against it for violating N.J.S.A. 101 a and b, and N.J.A.C. 19:45-1.25.

The Division's recommendation that Zoby be ordered to pay restitution to the estate of the late Albert Miller in an amount of $127,000 is rejected. The $127,000 represents the total amount of the 18 checks cashed by Zoby which permitted Miller to repay debts incurred as a consequence of Miller's gaming activity. Restitution is defined as the "Act of restoring, restoration; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; an indemnification." Black's Law Dictionary, (Fifth Ed. 1979) at 1180. Here, Miller engaged in a sanctioned gambling activity by his own volition. He participated at the gaming tables by his own choosing with no evidence that he was either coerced or did so against his will. Miller incurred debts which he satisfied, in part, through the cashing of his personal and business checks by Zoby. There is no evidence that the "damage or injury" visited upon Miller was by anyone other than himself. For the Division to seek restitution of legitimate gambling losses incurred by Miller is without merit and must be **DENIED**.

The Cash Holding Count (Count IV)

The seriousness of Zoby's violation of section 101b of the Act and the regulatory provisions at N.J.A.C. 19:45-1.11 (c) 9 and (g) and N.J.A.C. 19:45-1.15 cannot be minimized. Here Zoby received and maintained cash deposits from Miller rather than direct Miller to the cashiers cage to receive Miller's deposits. In so doing, Zoby placed himself in the position of general cashier when he accepted Miller's deposit and refunded Miller with gaming chips. There is no statutory or regulatory provision which permits a junket representative to act as or substitute for a general cashier in the casino industry. Zoby's contention that Miller did not wish to use the casino facilities for his cash deposits is no justification. "In a strictly regulated industry, compliance is required and therefore expected." Div. of Gaming v. Playboy-Elsinore Assoc., et al. 11 N.J.A.R. 192 at 207.

The record demonstrates that Albert Miller accompanied Zoby to the Sands on nine (9) separate junket trips between June 30, 1984 and August 23, 1986. On each of the nine junket trips, Miller was in receipt of gaming chip transfers from Zoby as a consequence of Zoby's receipt of cash deposits from Miller. No written record of these transactions was kept by Zoby nor was the cash deposited with the cashiers cage as required by regulation. By his conduct, Zoby undermined and placed at risk the integrity of gaming operations as it affects the custody of currency, patron checks, gaming chips and documents and records for same. N.J.A.C. 19:45-1.11 (c) 9 i.

An assessment of $1,000 for each of the nine junket trips is appropriate under the circumstance. Therefore, respondent is assessed the civil fine of $9,000 for the violation of N.J.S.A. 5:12-101b, N.J.A.C. 19:45-1.11 (c) 9 and (g) and N.J.A.C. 19:45-1.15. In addition, a fine of $1,000 against Zoby for his failure to maintain records of the receipt and disbursement of cash deposits in violation of N.J.A.C. 19:45-1.24 is also imposed, making the total $10,000 in fines for the violations in Count IV of the Division's Amended Complaint.

Similarly, the Sands is assessed $10,000 in fines for the above violations committed by it's agent, Ronald Zoby.

Zoby License Suspension

Respondent Zoby's argument that the law does not permit a suspension of his casino key employee license, under the facts asserted and found here, is misplaced and rejected. Pursuant to its broad and discretionary powers under section 64 of the Act, the Legislature granted the Commission the power and authority to limit or restrict any registration, suspend or revoke any license and impose penalties on any person licensed or registered in the casino industry. See, In the Matter of Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297 (App. Div. 1985) cert. den. 102 N.J. 352 (1985) cert. den. 475 U.S. 1085 (1986). Respondent Zoby's arguments to the contrary are, therefore, without merit.

The Division's request to suspend Zoby's license is also rejected and denied. Having considered the factors in section 130 of the Act in imposing such a sanction, the herein record demonstrates that:

1. Although the violations were serious and created a risk to the integrity of gaming operations, Zoby did not commit the violations purposefully and with the knowledge that his conduct was in contravention of the Act or the Commission's regulations. N.J.S.A. 5:12-130 a and b.

2. Respondent Zoby's prior history as an agent and/or employee in the casino industry is unblemished. N.J.S.A. 5:12-130 a and c.

3. Respondent Zoby took immediate corrective action, when advised by the Division, to refrain from accepting money from his junket participants and/or refunding the money with gaming chips. N.J.S.A. 5:12-130e.

4. The financial penalties imposed herein are sufficient to correct Zoby's conduct and to deter him as well as others from committing the same or similar offenses in the future.

ORDER

For the above reasons, it is hereby **ORDERED** the Divisions recommendation that respondent Zoby's license be suspended for a term of two (2) years, is hereby **DENIED.**

In summary, it is further **ORDERED** that the total monetary civil penalty to be imposed against respondent Ronald Zoby is $98,000. Similarly, it is **ORDERED** that the Sands be assessed a monetary civil penalty in the amount of $98,000.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

22 September 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

9/27/89
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 27 1989
DATE

Jayne LaVenia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

None.

EXHIBIT LIST

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-203
APP. DIV. DOCKET NO. A-4195-89T3

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	
Complainant,	
v.	OPINION
GREATE BAY HOTEL AND CASINO, INC., t/a THE SANDS HOTEL AND CASINO OF ATLANTIC CITY AND RONALD A. ZOBY,	
Respondents.	

Roberto Rivera-Soto, Esq., Vice President & Corporate Counsel, appeared on behalf of respondent Greate Bay Hotel and Casino, Inc.

Nicholas A. Casiello, Jr., Esq., Horn, Kaplan, Gorney & Daniels, appeared on behalf of respondent Ronald A. Zoby

Kevin F. O'Toole, Deputy Attorney General, appeared on behalf of the Division of Gaming Enforcement

This case involves substantial questions regarding the relationship between and among a casino licensee, a junket representative and patrons the junket representative brings to the casino. By complaint filed on January 19, 1988, and amended on May 17, 1988, the Division of Gaming Enforcement (Division) alleged that Ronald A. Zoby (Zoby), a licensed junket representative and owner of a junket enterprise, arrogated to himself functions which, under the

comprehensive design of the Casino Control Act and its attendant regulations, he was not authorized to perform. He was charged with improperly extending credit, receiving cash deposits and cashing checks.

More specifically, the Division asserted that Zoby used his casino credit account to obtain gaming chips which he then later transferred to junket participants (sometimes "junketeers") in violation of the credit provisions, N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 and -1.27. It further charged that Zoby received and maintained cash provided by one particular patron, the late Albert Miller, which was returned to Miller in the form of chips for gambling in violation of N.J.S.A. 5:12-101(b); N.J.A.C. 19:45-1.11(c)(9), -1.11(g) and -1.15, and that he failed to prepare the documentation required for such transactions by N.J.A.C. 19:45-1.24. The Division also charged that Zoby exercised approval authority with regard to the authorization of casino credit for Miller and others in violation of N.J.S.A. 5:12-102(l)(2). Further, the Division alleged that Zoby cashed checks for Miller so that Miller could repay gambling debts, contrary to N.J.S.A. 5:12-101(a), -101(b) and N.J.A.C. 19:45-1.25. Finally, the Division alleged that Greate Bay Hotel and Casino Inc. (Greate Bay) was liable for the foregoing violations pursuant to N.J.S.A. 5:12-102(g) and (h) as a consequence of

Zoby's employment as a junket representative at its gaming establishment, the Sands Hotel and Casino (Sands).

Two initial decisions were filed in this case. In the first, issued on February 10, 1989, the Administrative Law Judge decided cross motions for summary decision and considered only questions of liability. He concluded that, based on stipulated facts, Zoby had committed all violations alleged in the complaint and both he and respondent Greate Bay were liable. Without considering the merits of this decision, the Commission remanded the case to the Office of Administrative Law (OAL) for recommendations as to penalties. At the remand hearing on May 8, 1989, testimony was taken on the penalty issue and, because the parties could not agree on whether the first decision resolved the matter, on the issue of whether Zoby's practice of establishing "gambling partnerships" with his junketeers violated N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.27. In the second initial decision issued on September 22, 1989, the ALJ concluded that Zoby's gambling partnerships were not unlawful. With respect to the violations previously determined, the ALJ recommended that respondents Zoby and Greate Bay each pay civil penalties totaling $98,000.

By order dated March 12, 1990, the Commission rejected the ALJ's conclusions that, on the stipulated facts, Zoby's use of his credit account to obtain gaming chips for junket patrons violated the credit provisions, N.J.S.A. 5:12-101,

N.J.A.C. 19:45-1.25 and -1.27, and that this conduct involved the exercise of credit approval authority in violation of N.J.S.A. 5:12-102(1)(2). The remaining conclusions on liability were adopted but the penalty recommendations were substantially modified. At the public meeting of February 7, 1990, the Commission imposed penalties totaling $22,500 on respondent Zoby and $45,000 on respondent Greate Bay. The Commission issues this opinion to amplify its reasons.

Factual Background

The case was presented on cross motions for summary decision[1] and there are no disputed issues of fact. The ALJ's factual findings are, therefore, adopted and incorporated herein, and only a brief recitation of the significant facts is required.

Respondent Zoby is the sole proprietor of a junket enterprise which employs other junket representatives to assist in the planning and execution of gambling excursions to Atlantic City and other locations. Zoby's association with the Sands extends back to 1981. Since December 1985 the employment relationship has been governed by a written agreement which ties Zoby's compensation to the level of

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1. Following the remand testimony was elicited from various individuals, including Mr. Zoby, on the issue of gambling partnerships and penalty.

play of the patrons he brings to the casino. The relationship has been a profitable one, certainly for Zoby who reportedly earned $504,000 for 1988, and presumably for the Sands as well. [2]

Zoby established a credit account at the Sands in June of 1984. At the time of the hearing, his credit line was $85,000. Zoby utilized the credit account for two distinct purposes: to facilitate his own gambling and to provide chips to his junketeers. A self-described avid gambler, Zoby was too busy to engage in gaming activities personally in the course of any of the junkets he brought to the Sands. It was for this reason that he engaged in the gambling partnerships.

At issue here are 62 occasions between June 1980 and December 1987 on which Zoby caused counter checks to be issued against his credit account. On each occasion, the gaming chips he received in exchange for the counter checks were thereafter transferred to Zoby's junketeers. Some of these were for the purpose of establishing gambling partnerships. However, 35 of these chip transfers, worth a total of $295,00, were made for the sole convenience and gambling purposes of junketeers. At the outset of the junket, the patrons involved, including Miller, had given

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2. Transcript of OAL hearing of May 8, 1989 at 10-16.

Zoby cash for safekeeping in an amount at least equal to the value of the chips transferred. Apparently, the junketeers preferred this procedure over depositing their money at the casino cage in the manner authorized by the regulations.

It is further established that for approximately three and one-half years Zoby routinely cashed personal and business checks for Miller, whose casino credit privileges had been suspended. Zoby did so knowing that the proceeds of the checks were to pay Miller's gambling debts incurred as a result of loans from other junketeers. Documents evidencing that Zoby cashed 18 such checks totaling $127,000 are included in the record before us.

Respondent Zoby kept no records of any of these transactions. Neither did he charge any fees or interest for providing any of these "services" to his junketeers.

Liability of Respondent Greate Bay

At the outset, we will dispose of Greate Bay's contention that under no circumstances can it be held accountable for any violations which Mr. Zoby may have committed. The argument advanced by Greate Bay is essentially that it is not responsible for any acts of Zoby that were contrary to the Act or regulations because such conduct would necessarily be beyond the proper course and scope of his agency as a junket representative of the Sands.

We have heard and roundly rejected similar arguments from this and other casino licensees before. In the most

recent case involving Greate Bay, the Commission's decision was affirmed by Appellate Division in an unreported opinion which concluded that the casino licensee was liable for its employees' violations under the doctrine of respondeat superior and added:

> Moreover, as the Commission properly noted, a determination that Greate Bay, should be responsible for its employees' conduct is even more compelling in the context of casino gaming, given the legislative policy of strict regulation. ...To insulate Greate Bay from the conduct of its employees in such circumstances would erode the prophylactic effect of the regulations. [State v. Greate Bay Hotel and Casino, Inc., et al Docket No. A-550-86T6, unpublished Appellate Division opinion, decided July 8, 1988), slip opinion at 8.

These principles apply here as well. But the case for Greate Bay's liability is even more compelling in this case. Section 102(g) provides that, "[a] casino licensee shall be responsible for the conduct of any junket representative or junket enterprise associated with it...." Section 102(h) provides that,

> [a] casino licensee shall be responsible for any violation or deviation from the terms of a junket. Notwithstanding any other provisions of this Act, the Commission may, after hearings in accordance with this Act, ... assess penalties for such violations or deviations, prohibit future junkets by the casino licensee, junket enterprise or junket representative, and order such further relief as it deems appropriate.

Here in clear, unambiguous terms the Legislature has imposed absolute, vicarious regulatory liability upon casino licensees for the behavior of those who conduct junkets on their behalf and has authorized this Commission to mete out suitable penalties. Because all the allegations of impropriety alleged against Zoby in this case occurred in the course of his junkets to the Sands, Greate Bay is responsible for such violations by Zoby as are established in the record.

Zoby's use of Credit Account to obtain Chips for Patrons

Zoby used his credit account to provide funds in the form of chips for use by his junket patrons. The Division contends this conduct violated N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25 and -1.27. The ALJ disagreed with respect to those instances where Zoby gave chips to his junket patrons for the purpose of establishing gambling partnerships. As to these, the ALJ reasoned that a junket representative has the "statutory right" to wager at any casino game pursuant to section 100(n),[3] and that gambling partnerships are not otherwise precluded by the Act or regulations. Init. dec. dated September 22, 1989, at 8. As

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3. N.J.S.A. 5:12-100(n) is a provision which prohibits most casino and casino key employees from wagering "at any time in any casino in this State." Among those expressly exempted from the prohibition are junket representatives.

to all the other chip transfers, the ALJ ruled that Zoby's use of his credit account to provide a "bank" for the transfer of chips to junket participants constituted an "advance" of funds for gaming contrary to section 101 of the Act and disrupted the "paper trail" and "recognized use" of a casino credit account contrary to N.J.A.C. 19:45-1.27. Init. dec. dated February 10, 1989, at 44, 45. Consistent with his finding that Zoby's chip passing, except for gambling partnership purposes, was an extension of credit, the ALJ concluded that this conduct also violated N.J.S.A. 5:12-102(b)(2), which prohibits junket representatives from exercising credit approval authority.

Credit for gaming purposes was a controversial issue before the Casino Control Act was enacted into law in 1977. The State Commission of Investigation had recommended that credit not be permitted at all, while others, including the Governor's Staff Policy Group, had recommended that credit be allowed but only under stringent restrictions. See State Commission of Investigation Account and Record on Casino Gambling April, 1977, at pp. 1-E to 9-E; Second Interim Report, Staff Policy Report on Casino Gambling, February 17, 1977, at pp. 34-36. The latter approach was adopted by the Legislature and section 101 of the Act, together with the strict regulations adopted by the Commission, were the

result.[4] Only specifically designated and appropriately licensed casino employees are permitted to participate in credit-related transactions. Moreover, many of the credit-related functions are also limited as to where they may occur. Most of the important ones are restricted either to the area known as the casino cage or to the gaming pits. Junket representatives are expressly precluded from engaging in credit-related activities by N.J.S.A. 5:12-102(1).[5] Given this regulatory framework, the allegation that Zoby violated these credit provisions must be evaluated with extreme care.

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4. The regulations, particularly N.J.A.C. 19:45-1.27 have been "tightened" to meet with problems that have arisen over time. This case requires no extensive discussion of the changes or the reasons for them. It suffices to note that the regulations provide in exquisite detail the procedures which must be followed regarding all aspects of the credit process.

5. N.J.S.A. 5:12-102(1) provides:

> No junket enterprise or junket representative or person acting as a junket representative may:
>
> (1) Engage in efforts to collect upon checks that have been returned by banks without full and final payment;
>
> (2) Exercise approval authority with regard to the authorization or issuance of credit pursuant to section 101...
>
> (3) Act on behalf of or under any arrangement with a casino licensee or a gaming patron with regard to the redemption, consolidation, or substitution of

(Footnote Continued)

The thrust of the Division's allegations is that Zoby, through the use of his own properly established credit line at the Sands, set himself up as a casino cage and credit department for the convenience of his junket customers. Were these allegations supported by this record we would, without hesitation, condemn them with severe penalties. But upon careful examination of this record we find no transgression of the credit provisions.

N.J.S.A 5:12-101(a)(1) provides:

> a. Except as otherwise provided in this section, no casino licensee or any person licensed under this Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this Act, shall:
>
> (1) Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activity as a player.

The essence of a credit transaction in the context of casino gaming is the extension of cash or chips or their equivalent and a correlative obligation to repay. In none of the transactions under scrutiny here was there any obligation to repay. This record reveals that, on every occasion that Zoby advanced chips to his junketeers, other than for gaming partnerships, he was actually returning

---

(Footnote Continued)
the gaming patron's checks awaiting deposit pursuant to subsection c of section 101...

funds, albeit in the form of chips, that the patrons had given him in advance of the junket. Although these prior deposits of cash for Zoby's safekeeping were themselves contrary to the regulations (see infra), the transactions did not involve an advance of credit. Thus, the ALJ's conclusions that the respondents are responsible for violations of section 101 of the Act and N.J.A.C. 19:45-1.27 must be rejected. By parity of reasoning, the ALJ's conclusion that Zoby violated N.J.S.A 5:12-102(1)(2), which prohibits junket representatives from exercising credit approval authority, is also unfounded and therefore rejected.

On the issue of gambling partnerships, like the ALJ, we are unable to find that this activity contravenes any provision of the Act or the regulations. But that is not to say we condone the practice. It has the potential for creating problems and concerns similar to those which caused the Legislature to impose restrictions on casino credit and to carefully circumscribe a junket representative participation in credit-related transactions. For example, disputes may well arise as to the amount of money to which the junket representative is entitled upon "settling up" after the gaming is concluded. The resulting collection process, not currently subject to regulatory scrutiny, is filled with potential problems, the likes of which have been documented in other jurisdictions. The potential for

problems is, of course, exacerbated where, as here, no written records are kept. Moreover, the concerns are not limited to the welfare, financial and physical, of the patron and the junket representative. It bears noting that the sweep of section 102(g) is extensive: "A casino licensee shall be responsible for the conduct of any junket representative or junket enterprise associated with it...."

Because we find no violation of existing law we concur with the ALJ's recommendation to dismiss the allegations pertaining to gambling partnerships. However, we invite the Division to join with us in further consideration of the issue with an eye toward proposing new regulations or statutory constraints, if necessary.

Zoby's practice of Holding Cash for Junket Patrons

Mr. Zoby made a practice of taking custody of large sums of money from some of his junket patrons at the beginning of a junket trip. Zoby believed that these patrons did not wish to experience the delays which might be occasioned if they deposited their funds with the casino. To accommodate his patrons Zoby held the funds himself. He was equipped with an electronic paging device so he could be summoned by other casino personnel to provide these patrons with cash or chips on demand.

In his first initial decision, the ALJ concluded that, by holding his patrons' funds for safekeeping, Zoby performed the functions of a general cashier in violation of

N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.11, and -1.15, and, by failing to prepare the required documentation and follow the required procedures to account for the receipt of these deposits, he violated the provisions of N.J.A.C. 19:45-1.24. We agree.

The relevant portion of N.J.S.A. 5:12-101(b) states:

> 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.

In addition to enunciating specific instructions relating to customer deposit files and forms, N.J.A.C. 19:45-1.24(a) provides in relevant part:

> Whenever a patron requests that the casino hold his cash... for subsequent use he shall deposit the cash... with a general cashier.

N.J.A.C. 19:45-1.11 and 1.15 set forth the functions of the cashiers' cage and cage personnel and N.J.A.C. 19:45-1.11(g) states that, "(f)unctions described in this section shall be performed only by persons bearing the particular title and licensed to the particular position, or persons licensed to supervise that particular position appropriate to such functions, under the Casino Control Act." Additionally, the general cashier is to receive funds for safekeeping and is to do so within the physical confines of the highly secure casino cage. See N.J.A.C. 19:45-1.15(b).

It is axiomatic that casino gaming in New Jersey remains compatible with the general public interest only so long as stringent limitations and regulatory supervision are maintained. In Petition of Adamar, 222 N.J. Super. 464 (App. Div. 1988), the Appellate Division reviewed the comprehensive regulations pertaining to the receipt of cash and cash equivalents and confirmed the Commission's conclusion that receipt of patron funds must occur within the well-monitored cashier's cage.

The role of junket representative in this regulatory scheme was also specifically addressed in State v. Greate Bay Hotel and Casino, Docket No. 86-32 (decided April 8, 1987); State v. Landsman, Docket No. 87-6 (decided September 28, 1987); and State v. Harrah's Associates, Docket No. 86-98 (decided December 2, 1988). Collectively, these cases establish that junket representatives are not permitted to perform sensitive functions which under the Act and the Commission's regulations are restricted to the general cashier or other designated casino personnel.

The detailed and carefully crafted safeguards surrounding the receipt and handling of money, and important documents from patrons are rendered meaningless if casino employees, other than the general cashier, can set themselves up as alternative repositories for patrons' cash deposits. It is no excuse that respondent Zoby performed these functions as a convenience to the participants in his

junkets. It may well be that authorized cash deposit procedures entail some measure of delay or inconvenience. However, the regulatory process requires a secure location for these funds and creation of a comprehensible audit trail if protection of the gaming public and efficient oversight by the regulators is to be realized.

Zoby admitted and we have found that he held cash for numerous patrons on various occasions including all of those cited in response to the chip transfer charges. However, the Division's case for the cash deposit violations was limited to nine incidents between June 30, 1984, and August 23, 1986, in which Zoby held cash for the late Albert Miller. In his second initial decision the ALJ recommended that both Zoby and Greate Bay be assessed $1,000 for each of the violations he found. The penalty for the cash deposit violations, therefore, total $9,000 for nine junket trips. The ALJ further recommended that the respondents be assessed an additional $1,000 for Zoby's failure to maintain records of the receipt and disbursement of cash deposits in violation of N.J.A.C. 19:45-1.24.

As we have stated, we believe that the risk to the public and gaming operations created by Zoby's conduct is considerable.

In mitigation, the respondents argue that this is the first time that a complaint was filed against a junket representative alleging that holding cash for patrons

violates the Act and regulations. While that is true, respondents were not without notice that this conduct was improper. Most basically, section 102(g) of the Act imposes upon casino licensees the responsibility for the actions of the junket representatives and a casino could hardly maintain that any of its employees, other than the proper cage personnel, could establish safekeeping deposits. Moreover, in the Greate Bay, Landsman and Harrah's Associates cases cited previously, the Commission held that junket representatives may not perform sensitive functions restricted to the general cashier. While Zoby may not have had actual knowledge of any of these decisions, he is charged with knowledge of the Act and the regulations. Further, Greate Bay surely had actual notice of the case involving it and should have known about the other cases. Casino licensees can and should be aware of unambiguous regulatory provisions as well as Commission decisions which affect their own compliance with the Act and the regulations. Nevertheless, as to Zoby, we would agree with the ALJ that the seriousness of his conduct is mitigated because he did not actually know his conduct was prohibited and because he stopped taking cash deposits immediately after being informed that the Division believed that this practice was improper.

In view of these factors, the Commission believes that the $1,000 per violation penalty recommended by the ALJ for

each cash deposit violation should be reduced to $500. Because we consider Zoby's failure to maintain records of these transactions to be of equal significance, we would impose a penalty of $500 for each of those nine violations. Because we believe that Greate Bay knew of the limitations on junket representatives and should have taken an active role in supervising Zoby's junket activities, because Greate Bay previously has been sanctioned for extra-regulatory activity by a junket representative, and because Greate Bay evidently has greater financial means, we impose a penalty of $1,000 for each of the cash holding violations and a penalty of $1,000 for each of the record keeping violations.

Zoby's Practice of Cashing Checks for Junket Patrons

Mr. Zoby also admits that for approximately three-and one-half years he routinely cashed personal and business checks for Albert Miller so that Miller could repay funds he had borrowed from other junket participants. The ALJ found that this conduct was prohibited by N.J.S.A. 5:12-101(a)(1) and N.J.A.C. 19:45-1.25(a)(1) which provide that no casino licensee or any person licensed under this Act shall cash any check to enable any person to take part in gaming activity as a player. Again we find ourselves in substantial agreement with the ALJ.

Zoby's practice of cashing checks for Miller clearly violates the language of the Act and regulations as well as their underlying policies. Zoby was fully aware that the

checks he cashed for Miller were used to repay funds Miller had borrowed from other junket patrons to wager in the casino. The fact that Miller's checks were cashed after, rather than before, his gambling activities makes no difference.

Zoby's check cashing activities are serious offenses. Not only is the cashing of any check prohibited by section 101 of the Act and N.J.A.C. 19:45-1.25 of the regulations, Zoby's conduct enabled Miller to gamble beyond the funds which he brought to Atlantic City. Had his checks not been honored by his bank, they would have given rise to an unpaid and unenforceable (N.J.S.A. 5:12-101(f)) gaming debt between Miller and Zoby. The Commission's credit regulations were designed, to prevent just such situations.

In mitigation, Zoby argues that this is the first time he has been been charged with violating the Act and regulations and, as already noted, he immediately stopped his check cashing activities as soon as the Division notified him that it considered those practices to be a problem. Because we agree that the seriousness of Zoby's actions are somewhat mitigated by these factors, we believe that the $1,000 per violation penalty suggested by the ALJ should be reduced to $750. As to Greate Bay, we would increase the monetary penalty to $1,500 per violation for several reasons. First, as to it there are no mitigating circumstances. On the contrary, we view the prior

junket-related violation found in State v. Greate Bay Hotel and Casino, Docket No. 86-32 as an aggravating factor. Second, the balance of the section 130 standards as applied to casino licensees is not the same as those for individual licensees because, in assessing monetary penalties, section 130 authorizes the Commission to consider the respondents' relative ability to pay. Third, we believe an enhanced penalty is warranted here in order to encourage casino licensees to supervise, instruct and evaluate their junket representatives.

Lastly, at the OAL the Division recommended that Zoby be ordered to pay restitution to Miller's estate in the amount of $127,500. The ALJ rejected the restitution argument and the Division does not press for reversal on that account. In any event, we would agree with the ALJ that restitution is not a proper sanction in this case.

CONCLUSION

We adopt the ALJ's conclusions that (1) Ronald Zoby's practice of establishing gambling partnerships with his junket patrons is not contrary to existing law; (2) Zoby performed the duties and functions of a general cashier in violation of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.11(c)(9), -1.11(g) and -1.15 when he maintained cash deposits for Albert Miller, and violated the provisions of N.J.A.C. 19:45-1.24 when he failed to prepare written accounts for the receipt and disbursement of these funds;

and (3) Zoby's practice of cashing checks to enable Miller to repay gambling debts to other patrons violated N.J.S.A. 5:12-101(a), -101(b) and N.J.A.C. 19:45-1.25; and (4) respondent Greate Bay is liable for all of the violations committed by respondent Zoby. However, we reject the ALJ's conclusion that Zoby's use of his casino credit account to obtain gaming chips for junket patrons violated N.J.S.A. 5:12-101, N.J.A.C. 19:45-1.25 and -1.27 where the record is undisputed that Zoby was returning funds deposited with him by the patrons. Lastly, we reject the ALJ's conclusion that return of their funds to the patrons in the form of chips also involved the exercise of approval authority with regard to the extension of casino credit in violation of N.J.S.A. 5:12-102(1)(2).

As penalties for the violations the following sanctions shall be imposed: (1) for each of the nine occasions on which Zoby illegally performed the duties of a general casino cashier, he is assessed a $500 penalty and Greate Bay is assessed a $1,000 penalty; (2) for each of the nine occasions on which Zoby failed to prepare written accounts for the receipt and disbursement of these funds, Zoby shall pay $500 and Greate Bay shall pay $1,000, and (3) for each of the 18 check cashing violations, a $750 penalty for Zoby and a $1,500 penalty for Greate Bay. The imposition of such penalties totals $22,500 for Mr. Zoby and $45,000 for Greate Bay.

NEW JERSEY CASINO CONTROL COMMISSION

VALERIE H. ARMSTRONG, ACTING CHAIR

E. KENNETH BURDGE, COMMISSIONER

W. DAVID WATERS, COMMISSIONER

FRANK J. DODD, COMMISSIONER

JAMES R. HURLEY, COMMISSIONER, ABSTAINED

Dated: July 10, 1990

Robert J. Genatt
General Counsel
New Jersey Casino Control Commission
Princeton Pike Office Park, Bldg. 5
Trenton, New Jersey 08625

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-4195-89T3 AND
A-4452-89T3

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Petitioner,	:	CIVIL ACTION
v.	:	AMENDED STATEMENT OF ITEMS COMPRISING THE RECORD ON APPEAL
GREATE BAY HOTEL CASINO, INC., t/a THE SANDS HOTEL AND CASINO OF ATLANTIC CITY AND RONALD A. ZOBY,	:	
Respondents.	:	

To: Emille R. Cox, Clerk
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex, CN 006
Trenton, New Jersey 08625

Kevin F. O'Toole
Deputy Attorney General
Division of Gaming Enforcement
Richard J. Hughes Justice Complex, CN 047
Trenton, New Jersey 08625

Roberto Rivera-Soto, Esq.
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Nicholas F. Casiello, Jr., Esq.
Horn, Kaplan, Goldberg, Gorny & Daniels
1300 Atlantic Avenue, Suite 500
Atlantic City, New Jersey 08401

Dear Sirs:

TAKE NOTICE that the State of New Jersey, Casino Control Commission, hereby states and files pursuant to R. 2:4-4(b) the Statement of Items Comprising the Record on Appeal in this matter. The record consists of the following items:

1. Complaint of the Division of Gaming Enforcement (Division) filed January 19, 1988, (25 pages), together with exhibit (2 pages).

2. Letter from Helen M. DiPietro, Paralegal, dated January 22, 1988, serving complaint on respondent Greate Bay Hotel Casino (Greate Bay) (2 pages).

3. Letter from Ms. DiPietro dated January 22, 1988, serving complaint on respondent Ronald A. Zoby (Zoby) (2 pages).

4. Notice of defense and request for a hearing filed February 16, 1988, by respondent Greate Bay (12 pages).

5. Notice of defense and request for a hearing filed February 16, 1988, by respondent Zoby (5 pages).

6. Prehearing order of Steven L. Carnes, Administrative Law Judge (ALJ), dated May 4, 1988, (9 pages).

7. Amended complaint of the Division dated May 17, 1988, (31 pages), together with exhibits (3 pages).

8. Greate Bay's notice of defense to and request for a hearing on the Division's amended complaint dated May 27, 1988, (17 pages).

9. Zoby's amended notice of defense and request for a hearing dated June 2, 1988, (6 pages).

10. June 10, 1988, motion of respondent Zoby for summary decision (2 pages) filed together with brief in support of the motion (25 pages) and the affidavits of: Ronald Grablewski (2 pages), Gus Kalivas (2 pages), Willard Edwards (2 pages), Sidney Orlins (2 pages), William Runnells, Jr. (1 page), and of respondent Zoby (4 pages). [The affidavits submitted with Zoby's brief were executed subsequent to the filing of the brief].

11. June 10, 1988, motion of respondent Greate Bay to dismiss the Division's complaint for summary disposition (2 pages) together with memorandum in support of the motion (32 pages).

12. June 10, 1988, cross motion of the Division for summary judgment (2 pages), together with the Division's brief in opposition to respondent's motions and in support of the cross motion for summary decision (57 pages) and the affidavits of: Division Agent Ritchie King (6 pages), Deputy Attorney General (DAG) Kevin F. O'Toole (3 pages), Charles N. Cooper, Esq. (3 pages), and Gordon E. Miller (4 pages) and the following exhibits to the affidavits of Agent King and DAG O'Toole:

Affidavit of Agent King

a. Junket representative agreement between Zoby and the Sands for December 1, 1985, through November 30, 1987 (4 pages).

b. Zoby's credit application card (5 pages).

c. Albert Miller's credit application card (15 pages).

d. Copies of "Sands Rating Cards" for June 21, 1986, depicting gaming chip transfers from Zoby to junket participants Albert Miller, Will Walker, Willard Edwards, and Alex Hamway (13 pages).

e. Junket Report and Junket Guest Manifest for Zoby junket (8 pages).

f. Listing of 44 gaming chip transfers for the period June 1984 through September 1986 (also attached as Exhibit "A" to the Division's amended complaint) (2 pages).

g. Copies of 30 personal and business checks of Albert Miller that contain the endorsement of Zoby (30 pages).

h. Listing of personal checks reviewed by Zoby with Agent King (5 pages).

i. Listing of business checks reviewed by Zoby with to Agent King (3 pages).

j. Listing of 18 gaming chip transfers for the period February 23, 1986, through December 31, 1987 (also attached as Exhibit "B" to the Division's amended complaint) (1 page).

k. Junket representative agreement between Zoby and the Sands October 1, 1987, through September 30, 1988 (4 pages).

Affidavit of Kevin F. O'Toole

l. Transcript of May 22, 1987, sworn investigative interview of Zoby (80 pages).

m. Transcript of June 23, 1987, testimony of Zoby and William R. Runnells, Jr. before the U.S. District Court, Eastern District of Virginia (55 pages).

13. Letter brief of Zoby in reply to the cross motion and opposition brief of the Division dated July 25, 1988, (9 pages).

14. Reply of Greate Bay to cross motion of the Division and in support of its motion to dismiss dated July 25, 1988, (10 pages), together with certification of Mr. Rivera-Soto (3 pages).

15. Division's response to memorandum of Greate Bay and reply letter brief of Zoby dated August 1, 1988, (6 pages), together with exhibits (58 pages).

16. Letter from Roberto Rivera-Soto, Esq., to ALJ Lillard E. Law dated August 3, 1988, objecting to the Division's letter brief of August 1, 1988, and asking that such letter brief be stricken from the record (2 pages).

17. Letter from Wayne R. Rosenlicht, Esq., to ALJ Law clarifying Zoby's letter brief of July 25, 1988, (2 pages).

18. Letter from DAG O'Toole to ALJ Law in response to Greate Bay's letter objecting to the Division's letter brief dated August 9, 1990, (1 page).

19. Undated letter from ALJ Law to DAG O'Toole, Mr. Rivera-Soto, and Mr. Rosenlicht, memorializing a telephone conference of September 1, 1988, concerning his decision that the matter was ripe for a summary decision and other procedures to be followed by the ALJ and the parties (2 pages).

20. Letter from Mr. Rivera-Soto to ALJ Law dated September 21, 1988, requesting leave to reopen the record on behalf of Greate Bay (2 pages).

21 Letter from Mr. Rosenlicht to ALJ Law dated

September 27, 1988, indicating that respondent Zoby joins in Greate Bay's request to reopen the record (2 pages).

22. Letter from DAG O'Toole to ALJ Law dated September 30, 1988, indicating the Division's opposition to Greate Bay's request to reopen the record (3 pages).

23. Letter from ALJ Law to DAG O'Toole, Mr. Rivera-Soto, and Mr. Rosenlicht dated October 7, 1988, concerning the filing of a motion to reopen the record (2 pages).

24. Notice of Motion for Leave to Reopen dated October 14, 1988, (2 pages), together with Greate Bay's memorandum in support of the motion (15 pages), certification of Mr. Rivera-Soto (8 pages) and exhibits A through I.

25. Letter from Mr. Rosenlicht to ALJ Law dated October 17, 1988, indicating that respondent Zoby joins in the arguments of Greate Bay in support of the motion to reopen the record (1 page).

26. Letter brief of the Division dated November 9, 1988, in response to Greate Bay's motion for leave to reopen the record requesting that the motion be denied (23 pages) together with exhibit A (8 pages), certification of DAG O'Toole (2 pages) and attachment (2 pages).

27. Decision of ALJ Law dated December 6, 1988, denying Greate Bay's and Zoby's requests to reopen the record (13 pages).

28. Partial initial decision/summary decision of ALJ Law dated February 10, 1989, (50 pages).

29. Commission order dated March 14, 1989, remanding this matter to the OAL for a decision with respect to penalty (1 page).

30. Transcript of OAL hearing of May 8, 1989, (241 pages).

31. Letter brief dated June 29, 1989, from DAG O'Toole to ALJ Law concerning the Division's recommendation as to penalty and argument concerning a junket representative's participation in gambling partnership (33 pages).

32. Letter brief dated July 13, 1989, from Mr. Rosenlicht to ALJ Law in response to the Division's June 29, 1989, brief and containing Zoby's recommendations as to penalty (10 pages) together with exhibit (2 pages).

33. Memorandum concerning Greate Bay's recommendations as to penalty dated July 14, 1989, (11 pages).

34. Order dated September 19, 1989, extending the time for the filing of the initial decision (1 page).

35. Initial decision/Part II of ALJ Law dated September 27, 1989, (26 pages), together with the following exhibits admitted into evidence at the OAL hearing:[1]

    a. R-1. Letter to whom it may concern from Peter G. Decker, Jr., Chairman, Commonwealth of Virginia Board of Corrections, concerning Zoby's character (1 page).

    b. R-2. Letter to whom it may concern from Lawrence Douglas Wilder, Lieutenant Governor, Commonwealth of Virginia, concerning Zoby's character (1 page).

    c. R-3. Letter to whom it may concern from the Honorable Moody E. Stallings, Jr., State Senator, Commonwealth of Virginia, concerning Zoby's character (1 page).

    d. R-4. Letter to whom it may concern from the Honorable John S. Joannou, State Senator, Commonwealth of Virginia, concerning Zoby's character (1 page).

36. Exception letter of Greate Bay filed October 20, 1989, (2 pages), and memorandum in support of Greate Bay's exceptions (32 pages).

37. Exceptions brief of respondent Zoby filed October 27, 1989, (41 pages), together with exhibit (5 pages).

38. Exceptions brief of the Division filed October 27, 1989, (36 pages).

39. Letter filed November 3, 1989, responding to the Division's exceptions on behalf of respondent Zoby (2 pages).

40. Greate Bay's reply to the Division's exceptions filed November 3, 1989, (20 pages).

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1. The initial decision erroneously indicates that there were no exhibits.

41. Letter-brief of the Division filed November 3, 1989, replying to exceptions of Greate Bay and Zoby (18 pages).

42. Order dated November 2, 1989, extending time for final agency action (2 pages).

43. Order dated January 9, 1990, extending time for final agency action (1 page).

44. Transcript of the Commission's public meeting of December 20, 1989, pages 23 to 71.

45. Transcript of the Commission's public meeting of February 7, 1990, pages 25 to 39.

46. Commission Order No. 90-16-10 dated March 12, 1990, modifying the initial decisions of February 15, 1989, and September 27, 1989, and assessing penalties (2 pages).

47. Commission opinion dated July 10, 1990.

Ruth S. Morgenroth

Ruth S. Morgenroth
Assistant Counsel
Casino Control Commission

Dated: July 11, 1990

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-419
OAL DOCKET NO. CCC 5079-89
ORDER NO. 90-14-2

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

Complainant, :

v. :

GREATE BAY HOTEL & CASINO, INC., t/a THE SANDS HOTEL & CASINO OF ATLANTIC CITY, :

Respondent. :

ORDER

The parties having entered into a stipulation of facts and having filed same with the Office of Administrative Law (OAL); and the written argument of counsel having been filed with the OAL; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of April 4, 1990,

IT IS on this 9th day of April 1990, ORDERED for the reasons stated on the record that the initial decision is modified to include a thorough analysis of the factors in N.J.S.A. 5:12-130 which must be considered for a determination of sanctions:

a. Risk

Sands's employment of non-licensed or registered persons undermined the Commission's strict regulatory controls. The licensing and re-licensing of employees is the primary means of ensuring the continued qualification of those who participate in licensed gaming. Sands's inattention to these important regulatory safeguards posed a substantial risk.

b. Seriousness

Any statutory or regulatory violation which undermines the Commission's licensing function must be regarded as serious. However, there is no evidence to suggest that Sands's misconduct was done purposefully or knowingly. The violation appears to be one of omission rather than commission. Nevertheless, the length of time the violations went uncorrected, approximately 13 months for one employee and about 10 months for the other, is an aggravating factor.

c. Justification

Sands offers neither justification nor excuse for its misconduct.

d. Prior History

Commission records reflect that Sands has been the subject of 15 violation complaints. One involved a non-compliance issue similar to the one presented here. In State v. Greate Bay, Docket No. 83-436, the Commission accepted a stipulation calling for a total penalty of $17,500, $12,500 for permitting an individual who needed a key license to work on a registration and $5,000 for allowing another individual who required a key license to work on a casino employee license.

e. Corrective Action

The stipulation provides that by terminating both employees Sands has taken corrective action. This is true only insofar as the

past is concerned. But termination of these employees does virtually nothing to assure that similar violations will not occur in the future.

f. Severity of Misconduct

The amount of any monetary penalty is to be determined upon consideration of the severity of the misconduct and the financial means of the licensee. There is no reason to believe that the Sands is unable to pay an appropriate penalty. One way to assess the severity of these violations is to review prior Commission determinations in similar non-compliance cases.

In State v. Marina Associates, et al., Docket No. 85-10, Commission Order January 13, 1987, a $19,500 penalty was imposed for each of 39 violations where employees were found to be working without the proper credentials. These violations were part of a multi-count complaint filed against three licensed entities and the penalties as well as the facts were stipulated in a comprehensive and complex proposal to resolve all allegations against all respondents.

In State v. Trump's Castle, Docket No. 86-138, Commission Order January 25, 1988, the Commission approved a settlement and imposed a $7,000 sanction for permitting an employee to perform key functions in an unapproved position without licensure or qualification.

In State v. Elsinore Shore Associates, Docket No. 87-289, Commission Order January 25, 1988, the Commission approved a settlement and imposed sanctions of $2,000 for each of three casino employees working in key positions, and $3,000 for a casino hotel employee registrant working in a key position for a total of $9,000.

In State v. GNOC Corp., Docket No. 87-422, Commission Order August 30, 1988, the Commission adopted an initial decision which recommended a penalty of $5,500 for

permitting a casino hotel employee registrant to work as a casino employee licensee.

In State v. Claridge at Park Place, Docket No. 87-423, Commission Order September 23, 1988, the Commission imposed a penalty of $3,000 for allowing two casino employee licensees to work as key employees and a third individual to work without the proper endorsement.

Finally, in State v. GNOC Corp., Docket No. 88-114, Commission Order March 10, 1989, the Commission imposed a penalty of $5,000 for allowing a casino hotel employee registrant to work as a casino employee and $1,000 for employing a public area attendant for four months after his credential had expired.

Thus the range of sanctions for out-of compliance cases has ranged from $500 to $7,000 per violation. Apart from the other section 130 factors which undoubtedly account for some differences and the negotiation process which resulted in others, it would appear that the distinguishing factors include the position involved and whether it was filled by an unlicensed, underlicensed or never licensed person. The length of time the position was occupied by a person not holding the proper credential appears also to have been a factor.

g. Intent

There is no evidence to suggest that the violations were committed either intentionally or knowingly.

IT IS FURTHER ORDERED that the respondent is found to have violated N.J.S.A. 5:12-106(a), -117(b) and N.J.A.C. 19:41-1.3(b)(5), for employing a person as a bartender who failed to either renew her casino employee license or obtain a casino hotel employee registration; and

IT IS FURTHER ORDERED that the respondent is found to have violated N.J.S.A. 5:12-106(a), -117(b) and N.J.A.C. 19:41-1.3(b)(7) for employing a person as a cocktail waitress who failed to renew her casino employee license; and

IT IS FURTHER ORDERED that the respondent pay a civil penalty in the amount of $2,500 per violation for a total of $5,000 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5079-89
AGENCY DKT. NO. 89-419

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
GREATE BAY HOTEL AND CASINO, INC. t/a THE SANDS HOTEL, CASINO AND COUNTRY CLUB,
Respondent.

Katrina F. Wright, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jerseys, attorney)

Roberto Rivera-Soto, Esq., Vice President and Corporate Counsel,for the respondent

Record Closed: November 30, 1989 Decided: January 12, 1990

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

PROCEDURAL HISTORY

This matter concerns the complaint filed by the State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on June 5, 1989, seeking the imposition of an appropriate penalty for alleged violations and appropriate action to prevent any reoccurrence. The respondent, Greate Bay Hotel and Casino, Inc., t/a the Sands Hotel, Casino and Country Club (Sands) requested a hearing and the

matter was transmitted to the Office of Administrative Law on July 13, 1989, to be heard 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.

At the telephone prehearing conference, which was held on September 22, 1989, the parties agreed that the issue in this matter is:

> Whether the respondent allowed two employees, Michele Jones and Christina Corea to continue to work at its facility without an appropriate license or registration, in violation of the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. and the regulations promulgated thereunder.

The scheduled hearing date of October 26, 1989 was adjourned when the parties decided to proceed by the filing of a stipulation of facts and briefs. After receipt of the same, the record in this matter closed on November 30, 1989.

FINDINGS OF FACT

The stipulated facts in this matter are:

1. Petitioner, by and through its Division of Gaming Enforcement (hereinafter referred to as "the Division"), is now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1et seq., hereinafter referred to as "the Act") of enforcing said Act and the regulations promulgated thereunder by the Casino Control Commission (hereinafter referred to as "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, Greate Bay Hotel and Casino, Inc. (hereinafter referred to as "Sands"), is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at Indiana Avenue and Brighton Park in the City of Atlantic City, County of Atlantic, and State of New Jersey.

3. Sands is now the holder of a plenary casino license issued to it by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to Sands effective May 7, 1982 and Sands has been conducting its casino hotel operations pursuant to said license continually to date since that time including at all times referenced herein.

4. Sands is the holder of, and operates pursuant to, a Certificate of Operation effective August 13, 1980, at which time Sands was the holder of a temporary casino permit and was trading as The Brighton Hotel and Casino. Sands has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date including all times referenced herein. Said Certificate of Operations entitles Sands to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

5. On or about June 24, 1981, Michele Jones was issued a casino employee gaming related license by the Commission, CCC license number 30236-21.

6. On or about July 7, 1981, Michele Jones was hired by Sands as a Cocktail Server-Casino. A true and accurate copy of Sands' Personnel Notification Form is annexed hereto and incorporated herein, and marked as Exhibit A.

7. The employment position of Cocktail Server-Casino requires that a casino employee non-gaming related license [twenty-two (22)] be procured prior to the commencement of employment in that position. A true and accurate copy of Sands' Job Compendium setting forth the license requirement for the position of Cocktail Server-Casino is annexed hereto and incorporated herein, and marked as Exhibit B.

8. On or about June 30, 1987, Michele Jones' casino employee gaming related license expired. A true copy of the Commission's "Casino Employees Who Fail to Renew for June

1987" is annexed hereto and incorporated herein, and marked as Exhibit C.

9. Sands continued to employ Michele Jones in the position of Cocktail Server-Casino from July 1, 1987 until approximately July 20, 1988, notwithstanding the fact that Ms. Jones was not the holder of a valid casino employee non-gaming related license (22).

10. Michele Jones was listed on "Sands Casino Hotel Alphabetic Employee Listing," dated July 1, 1988, as being actively employed. A true and accurate copy of the "Sands Casino Hotel Alphabetic Employee Listing" is annexed hereto and incorporated herein, and marked as Exhibit D.

11. Sands terminated Michele Jones on or about July 20, 1988. A true and accurate copy of Sands' Employee Termination Notice is annexed hereto and incorporated herein, and marked as Exhibit E.

12. N.J.S.A. 5:12-90(a) was effective at all times referenced herein and provides:

"No person may commence employment as a casino employee unless he is the holder of a valid casino employee license."

13. N.J.S.A. 5:12-7 which was effective from January 9, 1980 until January 3, 1988 provided:

"Casino Employee" - Any natural person employed in the operation of a licensed casino, including, without limitation . . . and bartenders, waiters and waitresses or other persons whose employment duties require or authorize access to the casino but who are not included in the definition of casino hotel employee, casino key employee, or principal employee at (sic) hereinafter stated.

14. Following its amendment effective January 4, 1988, N.J.S.A. 5:12-7 provides in pertinent part:

"Casino Employee" - Any natural person employed in the operation of a licensed casino, including, without limitation . . . or any other natural person whose employment duties require or authorize access to restricted casino areas, including without limitation, appropriate maintenance personnel; waiters and waitresses; and secretaries.

15. N.J.S.A. 5:12-106(a) which was effective from February 15, 1982 until January 3, 1988 provided in pertinent part:

"A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment. Prior to the effective date of such appointment or employment, the casino licensee shall apply for a work permit for such employee, which shall be granted by the commission if the employee is registered or is the holder of a current and valid license . . ."

16. Following its amendment effective January 4, 1988, N.J.S.A. 5:12-106(a) provides:

"A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment. A casino licensee shall in accordance with the rules of the commission, apply for a work permit for each such employee, which shall be granted if the employee is the holder of a current and valid registration or license which permits employment in the position to be held . . ."

17. N.J.S.A. 5:12-117(b) which was effective at all times referenced herein and provides:

"Any person who employs or continues to employ an individual not duly licensed or registered under the provisions

of this act in a position whose duties require a license or registration under the provisions of this act is guilty of a misdemeanor and subject to not more than 3 years imprisonment or a fine of $10,000.00 or both, and in the case of a person other than a natural person, to a fine of not more than $50,000.00."

18. N.J.A.C. 19:41-1.3(b)(7) was effective at all times referenced herein, and provides in pertinent part:

"No natural person shall be employed in the operation of a licensed casino whose employment duties require or authorize access to the casino unless he shall be over 18 years of age and unless a casino employee license authorizing the particular position of employment shall have first been issued to him in accordance with section 90 of the Act. While excluding principal employees, casino key employees and casino hotel employees as defined in the Act, this category includes:

7. Waitresses . . . "

19. The employment of Michele Jones by Sands from on or about July 1, 1987 until approximately July 20, 1988 as set forth more fully in paragraphs five (5) through eleven (11) of this Count constitutes a violation of N.J.S.A. 5:12-106(a), N.J.S.A. 5:12-117(b), and N.J.A.C. 19:41-1.3(b)(7).

COUNT TWO

1. The stipulations set forth in Paragraphs one (1) through four (4) of Count One are incorporated by reference and made a part of the record hereof as if set forth at length.

2. On or about September 9, 1981, Christina Corea was issued a casino employee non-gaming related license by the Commission, CCC license number 30417-22.

3. On or about June 22, 1981, Christina Corea was hired by Sands as a Bartender-Hotel Service employee. A true and accurate copy of Sands' Personnel Notification Form is annexed hereto and incorporated herein, and marked as Exhibit F.

4. Prior to March 3, 1988, the employment position of Bartender-Hotel Service required that a casino employee non-gaming related license [twenty-two (22)] be procured prior to commencement of employment in that position. Subsequent to March 3, 1988, the licensing requirements for Sands' Bartender-Hotel Service position was downgraded to requiring a hotel registration (40). A true and accurate copy of Sands' Job Compendium setting forth the license requirement for the position of Bartender-Hotel Service is annexed hereto and incorporated herein, and marked as Exhibit G.

5. On or about September 30, 1987, Christina Corea's casino employee non-gaming related license expired. A true and accurate copy of the Commission's "Casino Employees Who Fail To Renew For September 1987" is annexed hereto and incorporated herein, and marked as Exhibit H.

6. Sands continued to employ Christina Corea, in the position of Bartender-Hotel Service, from October 1, 1987 until approximately July 20, 1988, notwithstanding the fact that Ms. Corea was not the holder of a valid casino employee non-gaming related license or a hotel registration.

7. Christina Corea was listed on the "Sands Casino Hotel Alphabetic Employee Listing," dated July 1, 1988, as being actively employed. A true and accurate copy of the "Sands Casino Hotel Alphabetic Employee Listing" is annexed hereto and incorporated herein, and marked as Exhibit I.

8. Sands terminated Christina Corea on or about July 20, 1988. A true and accurate copy of Sands' Employee Termination Notice is annexed hereto and incorporated herein and marked as Exhibit J.

9. N.J.S.A. 5:12-90(a) was effective at all times referenced herein, and provides:

"No person may commence employment as a casino employee unless he is the holder of a valid casino employee license issued by the commission."

10. N.J.S.A. 5:12-7 which was effective from January 9, 1980 until January 3, 1988 provided:

"Casino Employee" - Any natural person employed in the operation of a licensed casino, including, without limitation . . . and bartenders, waiters and waitresses or other persons whose employment duties require or authorize access to the casino but who are not included in the definition of casino hotel employee, casino key employee, or principal employee at (sic) hereinafter stated.

11. Following its amendment effective January 4, 1988, N.J.S.A. 5:12-7 presently provided in pertinent part:

"Casino Employee" - Any natural person employed in the operation of a licensed casino, including, without limitation . . . or any other natural person whose employment duties require or authorize access to restricted casino areas, including without limitation, appropriate maintenance personnel; waiters and waitresses; and secretaries.

12. N.J.S.A. 5:12-106(a) which was effective from February 15, 1982 until January 3, 1988 provided in pertinent part:

"A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment. Prior to the effective date of such appointment or employment, the casino licensee shall apply for a work permit for such employee,

which shall be granted by the commission if the employee is registered or is the holder of a current and valid license . . . "

13. Following its amendment effective January 4, 1988, N.J.S.A. 5:12-106(a) presently provides:

"A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment. A casino licensee shall in accordance with the rules of the commission, apply for a work permit for each such employee, which shall be granted if the employee is the holder of a current and valid registration or license which permits employment in the position to be held . . . "

14. N.J.S.A. 5:12-117(b) was effective at all times referenced herein, and provides:

"Any person who employs or continues to employ an individual not duly licensed or registered under the provisions of this act in a position whose duties require a license or registration under the provisions of this act is guilty of a misdemeanor and subject to not more than 3 years imprisonment or a fine of $10,000.00 or both, and in the case of a person other than a natural person, to a fine of not more than $50,000.00."

15. N.J.A.C. 19:41-1.3(b)(5) was effective at all times referenced herein, and provides in pertinent part:

"No natural person shall be employed in the operation of a licensed casino whose employment duties require or authorize access to the casino unless he shall be over 18 years of age and unless a casino employee license authorizing the particular position of employment shall have first been issued to him in accordance with section 90 of the Act. While excluding principal employees, casino key employees and casino hotel employees as defined in the Act, this category includes:

5. Bartenders . . . "

16. The employment of Christina Corea by Sands from on or about October 1, 1987 until approximately July 20, 1988 as set forth more fully in Count Two, paragraphs two (2) through eight (8) of this Count constituted a violation of N.J.S.A. 5:12-106(a), N.J.S.A. 5:12-117(b), and N.J.A.C. 19:41-1.3(b)(5).

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. The facts stated herein are true and correct as stated in this Stipulation;

2. In recognition of the above-noted violations of the Act and the regulations promulgated pursuant thereto relating to improper licensure of employees, and by terminating both employees, Sands has taken corrective action to ensure that the licensure status of the aforementioned employees is no longer in violation of any of the above-stated sections of the Act;

3. This stipulation shall be subject to the approval and acceptance of the Casino Control Commission.

Although not part of the stipulation of facts, Roberto Rivera-Soto, Esq., on behalf of the respondent, submitted the certifications of three Sands' employees with his initial brief in this matter. Since these certifications were not objected to by Deputy Attorney General Katrina F. Wright, I will consider them as part of the facts in this matter. In her certification, Lisa George stated that she is the person immediately responsible for checking the lists of expired licenses and registrations sent by the Commission. Ms. Wright was not performing said responsibility between July 1987 and July 1988, when the Sands received the failure to renew information regarding Ms. Jones and Ms. Corea. When Ms. George resumed this responsibility in July 1988, she determined that Ms. Jones and Ms. Corea had not renewed their respective licenses and immediate action was taken to terminate both employees. According to the certification of Ellen M. Duffy, both Ms. Jones and Ms. Corea then

filed grievances pursuant to the collective bargaining agreement between the Sands and the Hotel Employees and Restaurant Employees Local Union No. 54. After the Sands' determination to terminate their employment was affirmed, Frederick H. Kraus, Esq., in his certification stated that both Ms. Jones and Ms. Corea requested arbitration pursuant to the same collective bargaining agreement. After the arbitrator denied relief, Ms. Jones and Ms. Corea filed an action in the United States District Court for the District of New Jersey seeking reinstatement in their former positions with the Sands. This case was still pending when Mr. Rivera-Soto filed his brief in this matter.

Additionally, Ms. Jones and Ms. Corea reapplied to the Commission for licensure and both have received new licenses. By a letter dated May 3, 1989, the Hotel Employees and Restaurant Employees Local Union No. 54, on behalf of Ms. Jones and Ms. Corea, demanded their reinstatement to the positions from which they were terminated. When they were not reinstated, the union filed a demand dated May 25, 1989, requesting a grievance hearing and arbitration. The Sands is currently contesting this request for arbitration.

CONCLUSIONS OF LAW AND DETERMINATION

Since the stipulation of facts agreed to by the parties contains an acknowledgment of the violations of the Casino Control Act, the only issue in this matter relates to the appropriate penalty for said violations. The pertinent statute, N.J.S.A. 5:12-130, provides:

> In considering appropriate sanctions in a particular case, the commission shall consider:
>
> 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 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 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 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. The commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.

g. It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself.

In her brief, Deputy Attorney General Wright stated that the Commission notified the Sands when the licenses of both Ms. Jones and Ms. Corea expired and notwithstanding this information, the Sands continued to employ Ms. Jones for approximately ten months and Ms. Corea for approximately one year. Ms. Wright argued that the appropriate penalty to be assessed on Sands in this matter is $10,000.00, consisting of a penalty of $5,000.00 for the violations relating to Ms. Jones and a penalty of $5,000.00 as to the violations relating to Ms. Corea. Ms. Wright argued that when a casino allows an individual to work without the appropriate license or registration, the casino is effectively undermining the ability of the Commission to oversee the casino industry. Further, she argued that where a casino blatantly disregards the laws and public policies affecting the gaming industry, such action constitutes a serious violation which adversely affects the ability of the Commission to promote the public's confidence in the fairness, honesty and integrity of casino gambling.

In addition, Ms. Wright argued that there is no justifiable excuse for Sands' conduct and that this is the second case initiated against Sands for failing to ensure that its employees are properly licensed. In the prior case, Division of Gaming Enforcement v. Greate Bay Hotel and Casino, Inc., Agency DKT. 83-436 (Oct. 24, 1985), Sands allowed one employee to work in a position requiring a casino key license even though the employee only held a casino hotel employee registration, and allowed another employee to work in a position requiring a casino key license even though said employee only held a non-gaming license. In that case, the matter was settled and Sands paid a total penalty of $17,500.00.

Also, Ms. Wright argued that the Division is unaware of any remedial steps that have been taken by Sands to ensure in the future that its employees are working with the proper licenses or registrations.

Lastly, Ms. Wright argued that the proposed penalty is consistent with penalties that have been assessed in recent cases, Division of Gaming Enforcement v. Marina Associates, et al, OAL DKT. CCC 913-86, Agency DKT. 85-10 (August 8, 1986), adopted by Comm., Jan. 13, 1987; Division of Gaming Enforcement v. Elsinore Shore Associates, Agency DKT 87-289 (Jan. 25, 1988); Division of Gaming Enforcement v. GNOC Corporation, OAL DKT. CCC 4727-87, Agency DKT. 87-422 (Ap. 25, 1988), mod. on other grounds by Comm., Aug. 30, 1988; State v. Trump Castle Associates Limited Partnership, OAL DKT. CCC 4450-86, Agency DKT. 86-138 (Nov. 30, 1987), adopted by Comm., Jan. 25, 1988.

The Marina Associates case, involved a large number of employees working without appropriate licenses and various other violations. The aggregate stipulated penalty was $57,500.00 and there was a fine ranging between $500.00 and $8,000.00 for each of the individuals working without appropriate licensure. In the Elsinore Shore Associates case, there was a stipulated penalty of $2,000.00 for each of the three employees with gaming licenses who were allowed to work in positions requiring key licensure and a penalty of $3,000.00 for a employee holding a hotel registration who was allowed to work in a position requiring key licensure. As to the Elsinore Shore Associates case, Ms. Wright stated that the penalty reflected the fact that Elsinore discovered the violations and informed the Division and that Elsinore had a tenuous financial situation (it should be noted that the respondent's financial situation is not mentioned as a mitigating factor in the stipulation that outlines the settlement). In the GNOC case, the penalty was $5,500.00 for assigning duties to an employee who did not hold the appropriate license. In the Trump Castle case, there was a stipulated penalty of $7,000.00 for two violations, namely a person working without appropriate licensure and working a position not approved by the Commission.

Mr. Rivera-Soto stated that the Sands has been operating a casino since August 1980 and at any given time it has employed up to 3,000 employees. Mr. Rivera-Soto admitted that the Sands committed an error in that it failed to immediately "catch" the fact that Ms. Jones and Ms.Corea had allowed their licenses to expire. However,

he argued that there were no aggregating factors and that only a minimum penalty of $500.00 per violation (total of $1,000.00) should be imposed for the violations.

Mr. Rivera-Soto stated that "the Sands is in the rather odd position of, on the one hand, defending employment termination while, on the other hand, battling whether the underlying basis of such terminations should give rise to regulatory liability and a concommitant penalty. Kraus certification, para. 5 through 9, inclusive." (Respondent's memorandum regarding penalty, at 8-9).

Also, Mr. Rivera-Soto argued that the violations in issue created neither a risk to the public nor a risk to the integrity of casino operations since neither Ms. Jones nor Ms. Corea were involved in gambling activities. Mr. Rivera-Soto argued that the previous Sands case cited by Ms. Wright should not be considered to be a prior similar violation, since it can be differentiated on the facts. In the previous case, two employees were accused of performing casino key functions while their applications for casino key licenses were pending and another employee was carried on the payroll in order to protect his fringe benefits even though he did not perform any employee services. Also, Mr. Rivera-Soto argued that the previous Sands case is not relevant since the provisions of N.J.S.A. 5:12-130(d) refers to "prior history" as it relates to other actions "with respect to gambling activities" and this case involves two employees who had no job responsibilities relating to gambling activities.

Mr. Rivera-Soto stated that the cases cited by Ms. Wright show a penalty range between $500.00 and $8,750.00 per position and he argued that there was no justifiable reason for imposing a penalty of $5,000.00 per position as suggested by Ms. Wright in her brief. Further, Mr. Rivera-Soto argued that Ms. Wright's suggestions that multiple violations is a reason for imposing a smaller penalty per violation, see, Marina Associates case, is illogical and rewards the multiple violator, a result which he considers to be inconsistent with the rationale set forth in N.J.S.A. 5:12-130(f).

Having reviewed the facts as well as the arguments of the parties, I **CONCLUDE** that the $10,000.00 penalty suggested by Ms. Wright is excessive. I recognize that the prior Sands case is precedent since it also involved persons in positions without appropriate licensure, and I disagree with Mr. Rivera-Soto's argument that $500.00 per incident is an appropriate penalty in view of the fact that there has been a previous similar violation and the fact that it took the Sands a substantial period of time to find out about the violations. I have to also take into consideration the

nature of the employment of the two persons involved in this matter, the fact that the Sands was not initially aware that the two employees had failed to renew their licenses and that it took prompt action. Additionally, although I recognize that the Sands has had to extend monies in order to respond to the litigation initiated by the two employees, this does not have any direct bearing on the violations or the appropriate amount of the penalty. Based on all the facts, I **CONCLUDE** that a penalty of $2,500.00 for the violations for each of the two employees is an appropriate penalty, and I **ORDER** the Sands to pay a total penalty of $5,000.00.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 12, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 18 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

EXHIBITS ADMITTED INTO EVIDENCE:

Joint Exhibits:

J-1 A copy of the Sands' Personnel Notification Form regarding Michele Jones (Exhibit A)

J-2 A copy of the Sands' Job Compendium for the position of cocktail server-casino (Exhibit B)

J-3 A copy of the Commission's list of Casino Employees Who Fail to Renew For June 1987 (Exhibit C)

J-4 A copy of the Sands' Casino Hotel Alphabetic Employee Listing, dated July 1, 1988 (Exhibit D)

J-5 A copy of the Sands' Employee Termination Notice, terminating Michele Jones on or about July 20, 1988 (Exhibit E)

J-6 A copy of the Sands' Personnel Notification Form regarding Christina Corea (Exhibit F)

J-7 A copy of the Sands' Job Compendium for the position of bartender-hotel service (Exhibit G)

J-8 A copy of the Commission's list of Casino Employees Who Fail To Renew For September 1987 (Exhibit H)

J-9 A copy of the Sands Casino Hotel Alphabetic Employee listing ,dated July 1, 1988 (Exhibit I)

J-10 A copy of the Sands' Employee Termination Notice, terminating Christina Corea on or about July 20, 1988 (Exhibit J)

For the Petitioner:

None

For the Respondent:

None

WITNESSES:

For the Petitioner:

None

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-433
REGISTRATION NO. 78664-40
OAL DOCKET NO. CCC 5512-89
ORDER NO. 90-6-14

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

Complainant,

v.

MICHAEL K. HALLEY,

Respondent.

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 February 7, 1990,

IT IS on this 16th day of February 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Michael K. Halley 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5512-89
AGENCY DKT. NO. 89-433

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
MICHAEL K. HALLEY,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

David K. Cuneo, Esq., for respondent (George W. Matteo, Jr., attorney)

Record Closed: November 20, 1989 Decided: January 4, 1990

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 June 22, 1989, seeking revocation of the respondent's casino hotel employee registration, based upon the respondent indictment on May 31, 1989, on a charge of possession of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-10. By Order dated July 20, 1989, the Commission suspended the respondent's registration pending final disposition of the Division's complaint. This is the issue:

With specific reference to respondent's conviction upon a plea of guilty to possession of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-10, has the respondent been convicted of an offense which would render his continued case hotel employee registration inimical to the policy of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and to casino operations, pursuant to section 86c(2) of the Act.

PROCEDURAL HISTORY

On July 13, 1989, the Casino Control Commission received the respondent's request for a hearing concerning the Division's complaint. On July 26, 1989, the Commission transmitted this 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 conducted by telephone on September 12, 1989. The hearing was then held as scheduled in Atlantic City, New Jersey, on November 20, 1989. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are essentially undiputed. The respondent is a 38-year-old resident of Ventnor, New Jersey. He holds casino hotel employee registration number 78664-40.

According to the respondent's testimony, he received his registration in March of 1986 or 1987. His first casino-related employment was with the Tropicana Casino Hotel as a bus person for room service. In March 1988, the respondent began employment at the Showboat Casino Hotel as a bus person. Shortly prior to his termination from the Showboat in April 1989, the respondent was promoted to the position of waiter.

The respondent was arrested at work on April 17, 1989. At the time, he was a waiter and among his responsibilities were handling patrons money and complementaries. While on duty, the respondent was taken to the Division of Gaming Enforcement office and interviewed concerning his handling of patron bills and complementaries. According to the respondent, he had just started as a waiter and had very little experience. Some patrons were using complementaries for food and some were

using cash. Since the repsondent was getting a little backed up in his work, he simply put the complementaries in his pocket to be transacted later, since no change was necessary. When things slowed down, he began settling the checks that were paid with complementaries.

It was the testimony of the respondent that he had been awake for over 24 hours and he was having trouble because of cocaine use. He got very hungry and ordered something to eat. It was his intention to add the cost of his meal onto a customer's check and then settle it with that customer's complementary. He had not intended to pay for the dinner himself. According to the respondent, it was normal procedure for the waiters to add their dinner bill to a patrons check to get a free meal. He acknowledged that this was contrary to the announced policy of his employer.

According to the respondent, while he was settling the checks, his supervisor approached him and told him that the Division of Gaming Enforcement Investigators wanted to talk to him. In the Division's office, the investigator asked the respondent to empty his pockets. He complied and the investigators found a quantity of cocaine in the respondent's cigarette pack. The respondent testified that he purchased the cocaine off-premises about two or three hours before coming to work. The respondent was placed under arrest and charged with theft, contrary to N.J.S.A. 2C:20-3 (exhibit P-1) and possession of cocaine, contrary to N.J.S.A. 2C:35-10a (exhibit P-2). The next day, the respondent was also charged with committing a terroristic threat, for allegedly calling his supervisor at the casino and threatening to kill him, contrary to N.J.S.A. 2C:12-3 (exhibit P-3).

The respondent was subsequently indicted for possession of a controlled dangerous substance in the third degree, contrary to N.J.S.A. 2C:35-10a(1). This indictment was admitted into evidence at P-4. The respondent was not indicted on the other charges and they were dropped. On July 3, 1989, the respondent entered a plea of guilty to the charge of possession of cocaine. On August 18, 1989, he was sentenced to probation for two years, with a fine of $500 and a drug enforcement and demand reduction penalty of $1,000. The respondent was required to undergo drug screenings and to attend narcotics anonymous. He was also required to maintain employment as a condition of probation. In addition, the respondent's New Jersey driving privilege was suspended for a period of six months. The judgment of conviction and sentencing statement was admitted into evidence as exhibit P-5.

The respondent testified that he had worked as a florist designer for 17 years prior to obtaining employment in the casino industry. He left his previous career because he did not receive benefits and he did not believe it had a future. After working at the Showboat Casino Hotel for several months, the respondent began using cocaine. This was around August 1988. According to the respondent, he wanted to fit in with his coworkers and be part of their crowd. He described them as mostly 20 years younger than he. According to the respondent, his use of cocaine varried, depending on how much money he had to spend. The respondent estimated that he spent $50 to $100 per week on cocaine. He acknowledged buying the drug from coworkers away from the casino premises.

The respondent testified that he stopped using drugs when he was arrested in April 1989. He goes to group drug counseling every Wednesday night. All of his random drug testing has been clear. The respondent also testified that he had a new job within two weeks following his arrest. He worked at Bally's as a room service waiter from April to July 1989. The Casino Control Commission suspended the respondent's registration on July 20, 1989.

The respondent stated that he has returned to employment in the floral industry. He has two jobs, working for a florist in Ventnor and a florist in Egg Harbor. The respondent stated that he does floral arrangements and display designs. He has no problem with either job.

The respondent testified sincerely that he has learned his lesson concerning drugs. He understands that they are against the law and that he is now better off physically and financially. The respondent contributes to his mother's support and he would like to return to work in the casino industry, because of the benefits and the opportunity for advancement.

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 licensee or registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or 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 credential.

Pursuant to sections 91b and 86c(2) of the Act, the Commission may revoke the credential of any registrant who has been convicted of any offense which indicates that continued registration would be inimical to the policy of the Casino Control Act and to casino operations. It is undisputed that the respondent pled guilty on July 3, 1989, to possession of a controlled dangerous substance (cocaine) in the third degree, contrary to N.J.S.A. 2C:35-10a(1). He is currently serving his probationary term of two years.

Does the respondent's conviction for possession of controlled dangerous substance render his continued hotel employee registration inimical to the policy of the Casino Control Act and to casino operations, pursuant to section 86c(2) of the Act? The Commission has held that the rehabilitation factors set forth in section 91d of the Act must be considered in any case involving a registrant under the Act where section 86c(2) disqualification is at issue. Stated in another way, the rehabilitation factors are an integral part of the inimicality analysis. In the Matter of the Application of Horizon Air, Inc., For a Casino Industry License, DKT. NO. 87-CSI-10 (Comm. decision September 1, 1988).

Section 91d sets forth eight factors which should be considered in determining whether rehabilitation has been affirmatively demonstrated. These include the nature and duties of the position involved; the nature and seriousness of the conduct; the circumstances under which it occurred, the date of conduct and the actor's age when it was committed; whether the offense was isolated or repeated; social conditions contributing to the conduct; and any evidence of rehabilitation following the conduct.

The respondent is 38 years old. His offense was recent, with his arrest occurring in April 1989 and his guilty plea following in July 1989. The conduct of cocaine usage lasted from approximately August 1988 until April 1989.

Given the respondent's age, it cannot be said that youth played a factor in his conduct. However, it is apparent that he did not exercise mature judgment when he attempted to fit in to his co-employees' crowd by using cocaine. Drug usage is a serious problem and this is exacerbated by the respondent's criminal conduct on the premises of a licensed casino.

The respondent is sincere in his rejection of drug usage. He realizes he made a serious mistake. However, too little time has passed since his unlawful conduct to be assured that he will continue to refrain from drug usage. The respondent continues on probation and he must still undergo drug screenings. In light of all of the circumstance expressed above, I **CONCLUDE** that the respondent's continued participation as a casino hotel employee registrant would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I further **CONCLUDE** that the respondent has been convicted of an offense which indicates that his continued registration would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(2) of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registation of Michael K. Halley be **REVOKED.**

This recommended decision may be adopted, 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 4, 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

1/4/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 9 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For The Petitioner:

P-1	Summons for theft
P-2	Summons for possession of a controlled dangerous substance
P-3	Summons for terroristic threats
P-4	Indictment for possession of a controlled dangerous substance
P-5	Judgment of conviction

For The Respondent:

None

WITNESSES

For The Petitioner:

Michael K. Halley

For The Respondent:

Michael K. Halley

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-408
APPLICATION NO. 028376-22
OAL DOCKET NO. CCC 04024-89
ORDER NO. 90-10-3

RENEWAL APPLICATION OF NANCI L. HUMES
FOR A CASINO EMPLOYEE LICENSE — ORDER

A hearing 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 March 7, 1990,

IT IS on this 28th day of March 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly/am
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4024-89
AGENCY DKT. NO. 89-EA-408

NANCI LOUISE HUMES,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Nanci Louise Humes, petitioner, pro se

James J. Armstrong, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: January 19, 1990 Decided: January 31, 1990

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

This matter arises out of an objection to the renewal of petitioner's casino employee license, filed by respondent with the Casino Control Commission 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. A hearing was conducted on January 19, 1990, after which the record closed.

The questions presented are whether certain conduct by petitioner, would, if it had been prosecuted, constitute theft by deception, N.J.S.A. 2C:20-4, a statutory

disqualification N.J.S.A. 5:12-86C(1), and if so whether petitioner can establish that she is a person of good character and has been rehabilitated. N.J.S.A. 5:12-89b(2) and 5:12-90(h).

Certain facts are undisputed. Between October 14, 1985 and May 10, 1986, petitioner received unemployment benefits to which she was not entitled, while working at Harrah's Marina Hotel and Casino. On October 31, 1986, the Division of Unemployment and Disability Insurance obtained a judgment in Superior Court in the amount of $1,985.00 With accrued interest, this amount rose to $2,267.35.

Petitioner is 32 years old. She testified that in late September 1985 Harrah's had instituted cutbacks, and her position as a cocktail server was reduced to part time. She sought partial unemployment benefits, but did not know that tips were to be reported. Petitioner knew that tips were to be reported for tax purposes, but did not believe that this was the case for unemployment benefits. When she was informed by the Division of Unemployment Compensation in June 1986 that these monies were due, she appealed through the hearing process. From this record, it would appear that petitioner exhausted her administrative remedies sometime in the latter half of 1987, and she testified that it was only then that she realized that she had been wrong. When she did not hear from Unemployment for some time, petitioner wrote to them on November 15, 1988, asking that a payment schedule be established. Such a schedule was established and she made regular payments throughout 1989 until the debt was paid in full on January 12, 1990.

Petitioner has been working in the casinos since 1981, first at Playboy until 1984 and then at Harrah's. She offered that she had been suspended once for three days while at Playboy for improperly serving an alcoholic beverage, but that otherwise she has no record of discipline.

Petitioner also submitted a series of character letters from supervisors and friends indicating that she was a trustworthy individual. This is the substance of the record.

Petitioner was a credible witness and I adopt the facts as she presented them. Thus, while she knows now that she was not entitled to unemployment benefits, it appears that at the time she filed she did not know. Respondent has not established the purposefulness necessary to show that a crime was committed. Petitioner has

paid the debt in full, and her work history shows that she is a valued employee. Indeed, the character letters which she presented have an unusually glowing quality to them and it appears that her supervisors believe that she is an important asset to their operations.

Based on the foregoing, it is my conclusion that respondent has failed to establish any underlying criminal conduct. Moreover, petitioner has established her good character and to the extent that rehabilitation may continue to be relevant, it appears that she has been rehabilitated. It is **ORDERED** that she be awarded a renewal license.

This recommended decision may be adopted, 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 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(c).

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

1/31/90
DATE

SOLOMON A. METZGER, ALJ

Agency Receipt:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 2 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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WITNESSES

On behalf of petitioner:

Nanci Louise Humes

On behalf of respondent:

None

EXHIBITS

On behalf of petitioner:

P-1 Updated Credit Profile dated 3/29/88 (2 pp.)
P-2 Bureau of Benefit Payment Control Report on Field Investigation dated 6/8/86 (6 pp.)
P-3 New Jersey Department of Labor Claimant Ledger as of 7/1/86 (2 pp.)
P-4 Notice of Hearing dated 6/9/86
P-5 Record of Hearing dated 6/25/86
P-6 Refund Inquiry dated 8/1/88 (2 pp.)
P-7 Employee License Renewal Application (2 pp.)

On behalf of respondent:

R-1 Character letter from Richard A. Clarke dated 1/90 (2 pp.)
R-2 Character letter undated
R-3 Character letter from Anthony R. Felicetta undated
R-4 Character letter undated
R-5 Character letter from Eileen Guerrero undated
R-6 Division of Unemployment and Disability Insurance Notice of Satisfaction dated 1/12/90 (2 pp.)
R-7 Letter from Frank Schultz, Supervisor, Crossmatch Unit, Division of Unemployment and Disability Insurance dated 12/7/88
R-8 Report of Partial Unemployment
R-9 Notice of Hearing dated 4/7/87
R-10 Order of Dismissal dated 4/14/87

CASINO CONTROL COMMISSION DECISIONS

JANUARY - JUNE 1990

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PREPARED BY THE LEGAL DIVISION

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30 ~~31.~~	State of New Jersey v. Jeffrey G. Jackson	OAL CCC 03150-89 Agency 89-157	01/29/90	545
~~32.~~	State v. Robert James (See, State v. Adamar)			1
31 ~~33.~~	State of New Jersey v. Richard R. Johns	OAL CCC 08833-88 Agency 89-101	07/12/90	555
32 ~~34.~~	State of New Jersey v. Timothy W. Kreischer	OAL CCC 09263-88 Agency 89-120	01/23/90	577
33 ~~35.~~	Application of Kenneth M. Leeds, Jr. for a casino employee license	OAL CCC 01886-89 Agency 89-EA-334	02/28/90	587
34 ~~36.~~	State of New Jersey v. Patricia Joan Lenahan for a casino employee license	OAL CCC 02365-89 Agency 89-265	03/21/90	600
35 ~~37.~~	State of New Jersey v. Richard B. Leose	OAL CCC 01016-89 Agency 87-304	06/21/90	615
36 ~~38.~~	State of New Jersey v. Allen K. McBride	OAL CCC 05150-89 Agency 89-242	04/11/90	631
37 ~~39.~~	State of New Jersey v. Raymond A. McDonald, Sr.	OAL CCC 04971-89 Agency 89-415	03/21/90	652
38 ~~40.~~	State of New Jersey v. David K. L. Mao	OAL CCC 08585-87 Agency 88-116	05/09/90	670
39 ~~41.~~	State of New Jersey v. Richard J. Martinez	OAL CCC 01280-89 CCC 07578-87 (on remand) CCC 07918-86 (on remand) Agency 87-166	01/08/90	715
40 ~~42.~~	Application of Robert A. May for a casino employee license	OAL CCC 05340-89 CCC 07944-88 (on remand) Agency 89-EA-70	03/12/90	727

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41 ~~43.~~	Application for renewal of the casino employee license of Sharon P. Mays and State of New Jersey v. Sharon P. Mays	OAL CCC 05880-89; CCC 08825-88 (on remand) Agency 89-EA-141; 89-134	01/29/90	734
~~44.~~	State of New Jersey v. Joseph N. Merlino (See, State v. Bayshore Rebar, Inc.			113
42 ~~45.~~	Application of Kevin E. Munn for a casino employee license	OAL CCC 03492-89 Agency 89-EA-397	04/24/90	741
~~46.~~	State v. Nicholas Niglio (See, State v. Boardwalk Regency Corp.)			176
43 ~~47.~~	State of New Jersey v. Joseph E. Nocera	OAL CCC 05977-89 Agency 90-6	01/31/90	749
44 ~~48.~~	Applications of Brian S. O'Neill for renewal of a casino employee license and for a casino key employee license	OAL CCC 02854-89 Agency 89-EA-48	05/10/90	758
45 ~~49.~~	State of New Jersey v. Simone Palermo and Savemor Travel	OAL CCC 04041-89 Agency 89-336	06/06/90	774
46 ~~50.~~	State of New Jersey v. Vincent Panzarella	OAL CCC 05152-89 Agency 89-304	04/30/90	791
47 ~~51.~~	Application of Donald V. Parry for a casino employee license	OAL CCC 03546-89 Agency 89-EA-396	05/09/90	797
48 ~~52.~~	Application for renewal of the casino employee license of David C. Pruchnic	OAL CCC 04423-89 Agency 89-EA-410	06/20/90	805

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49 53.	State of New Jersey v. Resorts International Hotel, Inc., t/a Resorts International Casino Hotel	OAL CCC 06177-88 Agency 88-386	04/23/90	818
50 54.	Application of Leander C. Rice for a casino employee license and State of New Jersey v. Leander C. Rice	OAL CCC 06321-89 Agency 89-EA-301; 89-271	05/11/90	867
51 55.	Application of Samuel Robb for a casino employee license	OAL CCC 03491-89 Agency 89-EA-399	02/28/90	879
52 56.	Application for renewal of the casino employee license of Francine B. Rutledge	OAL CCC 00301-89 Agency 89-EA-243	02/27/90	888
53 57.	Application of Darlene O. Samuel for a casino employee license and State of New Jersey v. Darlene O. Samuel	OAL CCC 04424-89; CCC 08890-88 (on remand) Agency 88-EA-309; 90-227	04/25/90	897
58.	State of New Jersey v. Savemor Travel (See, State v. Simone Palermo)			774
54 59.	Application of Joseph M. Sciacca for a casino employee license	OAL CCC 04661-89 Agency 89-EA-415	05/11/90	910
55 60.	Application of Joseph V. Scott, Jr. for a casino employee license	OAL CCC 03333-89 Agency 89-EA-366	03/21/90	920
56 61.	Application for renewal of the casino employee license of Thomas L. Smith	OAL CCC 00651-89 Agency 89-EA-290	05/09/90	927

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57	~~62~~. Application for renewal of the casino employee license of Patricia A. Strickland	OAL CCC 06319-89 Agency 90-EA-42	06/07/90	939
58	~~63~~. Application for renewal of the casino employee license of Kenneth K. Thomas	OAL CCC 04401-89; CCC 01275-89 (on remand) Agency 89-EA-188	03/23/90	948
59	~~64~~. State of New Jersey v. Alberto B. Thompson	OAL CCC 04422-89 Agency 89-244	05/09/90	956
60	~~65~~. State of New Jersey v. Linh Cam Tran	OAL CCC 06687-89 Agency 90-52	04/11/90	966
61	~~66~~. State of New Jersey v. Lazaro Trejo	OAL CCC 00238-89 Agency 87-338	07/05/90	973
62	~~67~~. State of New Jersey v. Louis Vazquez	OAL CCC 04338-89 Agency 89-357	05/15/90	985
63	~~68~~. Application of Sidney W. Weiss for a casino employee license	OAL CCC 03153-89 Agency 89-EA-390	04/24/90	994
64	~~69~~. Application for renewal of the casino employee license of Joanne Williams, a/k/a Joann Ellis	OAL CCC 05155-89; Agency 89-EA-428	04/26/90	1013
	~~70~~. State of New Jersey v. Ronald A. Zoby (See, State v. Greate Bay)			436

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-393
APPLICATION NO. 76557-22
OAL DOCKET NO. CCC 03690-89
ORDER NO. 90-8-3

APPLICATION OF ROBERT IFERT
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 February 21, 1990,

IT IS on this 27th day of April 1990, ORDERED that the initial decision is modified as follows:

> To eliminate the administrative law judge's reference to the Division as having "met its burden" of establishing a disqualifying offense by a preponderance of the credible evidence. (Initial decision at 6). Where an application for licensure is involved, the existence of the disqualifying offense is to be determined by a review of the record as a whole. Although, as a practical matter, the Division generally presents evidence of disqualifying conduct, it does not bear any burden of proof where the subject matter of the proceeding is a license application. In the Matter of the Application of Resorts International, Inc. for a Casino License, 10 N.J.A.R. 244 (1979).

ORDER NO. 90-8-3

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly 10/5

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3690-89
AGENCY DKT. NO. 89-EA-393

ROBERT IFERT,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Martin S. Wilson, Jr., Esq., for petitioner.
Charles Kimmel, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney).

Record Closed: December 4, 1989 Decided: January 4, 1990

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (Division) alleges that petitioner, Robert Ifert, is statutorily disqualified from holding a casino employee license within the meaning of section 86(c)1 of the Casino Control Act (Act) by virtue of his conviction of theft by failure to make required disposition, in violation of N.J.S.A. 2C:20-9, a crime of the third degree. The Division further objects to the issuance of a casino employee license to

petitioner alleging that he lacks the good character, honesty and integrity required for licensure, pursuant to sections 89b(2) and 90b of the Act.

Petitioner requested a hearing and on May 16, 1989, the matter was transmitted to the Office of Administrative Law (OAL) 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 7, 1989, followed by a plenary hearing held on December 4, 1989 at the Atlantic City OAL, Atlantic City Civil Courthouse, Atlantic City, New Jersey. The hearing record was closed as of December 4, 1989.

ISSUES

The issues to be determined by this administrative tribunal, and as agreed to by the parties at the prehearing conference, are these:

A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: 2C:20-9, Theft by Failure to Make Required Disposition?

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2)?

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act?

BURDEN OF PROOFS

A. The Division has the burden of proving the elements of any alleged statutory disqualifier by a preponderance of the credible evidence.

B. Petitioner has the burden of affirmatively establishing his rehabilitation and proof of his good character, honesty and integrity by clear and convincing evidence.

UNCONTESTED FACTS

Based upon petitioner's testimony together with the documents moved into evidence by the Division, I **FIND** the following facts are neither contested nor in dispute in this matter:

From January 1980 until February 1984, petitioner was employed by MAB Paint Company. During the last two and one-half years of his employment with MAB he was a store manager, earning $7.50 per hour for 50 hours per week which included 10 hours overtime per week. Sometime between January 1980 and April 1983, petitioner was married and living in a house owned by his parents located in Ocean City, New Jersey. Between April 1983 and November 1983, petitioner was involved in a scheme whereby he supplied paint and other materials to a contractor, Charles Robinson, without recording the sales in the company's books. Charles Robinson would pay petitioner for the products where petitioner pocketed the money and manipulated the books to conceal the transactions. Petitioner's scheme was subsequently detected by MAB officials and he was immediately terminated from his employment position in February 1984.

Petitioner was thirty-three years of age when he was dismissed from his employment position by MAB. He was not under a threat of foreclosure from collecting agents nor did he face the need for bankruptcy. Petitioner asserted that he engaged in the scheme with Robinson because he was "...just trying to get a little bit ahead." (TR. p. 18).

On or about May 29, 1984, petitioner was indicted by the Atlantic County Grand Jury on two counts' i.e., First Court - Theft by Unlawful Taking, contrary to N.J.S.A. 2C:20-3 and, Second Count - Theft by Failure to Make Required Disposition, contrary to N.J.S.A. 2C:20-9. Petitioner entered a plea of not guilty to both counts on June 18, 1984.

Petitioner was alleged to have taken a total of approximately $8,000 in cash and materials not accounted for from MAB. Subsequent to his indictment, petitioner commenced making restitution to MAB in the manner of two payments of

$1,000 each. Petitioner admitted to taking $3,500 in cash. On September 14, 1984, petitioner retracted his not guilty plea to the Second Count of the Indictment and the First Count was dismissed. As a consequence of his guilty plea to Count Two, the Honorable Arthur Guerrera, J.S.C. imposed the following: Probation for three (3) years; Restitution of $4,436 (taking into account the two payments of $1,000 each and the forfeiture of his annual bonus check to MAB for the 1983 calendar year); Community service of 250 hours; a fine of $1,000; And, $25 to the Violent Crimes Compensation Board (VCCB).

Petitioner has satisfied all of the conditions of the sentence. He served his 250 hours of community services with Saint Peter's United Methodist Church of Ocean City, New Jersey, where he painted the youth room located in the church and the assistant pastor's home, located in Ocean City. In his reasons for sentencing, Judge Guerrera found only one aggravating factor while attributing six mitigating facts in petitioner's favor.

Subsequent to petitioner's termination by MAB, he was unemployed for approximately six weeks. Thereafter, he was employed as a painter-foreman with Consalvo Painting and Remodeling of Atlantic City from about March 1984 until April 1988. On April 25, 1988, petitioner was employed as a painter/paperhanger at the Atlantis Hotel/Casino, Atlantic City. He remained at Atlantis until June 26, 1989 when the property ceased operating as a casino/hotel. On October 1, 1989, he was employed by the Trump Regency Hotel (the former Atlantis) as a painter/paperhanger where he remained employed at the time of the hearing.

Petitioner is held in high esteem by his present supervisor and the Atlantis former assistant director of security as well as the former assistant to the president of Atlantis. All three individuals were aware of petitioner's circumstances concerning his offense and guilty plea and, despite said knowledge, considered him to be an excellent worker and rehabilitated with good character, honesty and integrity.

DISCUSSION AND CONCLUSIONS

Disqualifying Offenses Under Section 86c of the Act.

Section 86c(1) of the Act mandates that a person who has been convicted of any of the enumerated offenses under New Jersey Code of Criminal Justice; i.e., Title 2C of the New Jersey Statutes, shall be disqualified from holding a casino employee license. Section 86c(1) of the Act includes, among other offenses, violations of N.J.S.A. 2C:20-1 et seq., Theft and related offenses which constitute crimes of the second or third degree.

Petitioner argues that the offense to which he plead guilty, N.J.S.A. 2C:20-9, does not specifically deal with any monetary values and, therefore, leaves open to question as to whether or not such a charge is subject to grading of theft offenses, pursuant to N.J.S.A. 2C:20-2b.

The Division argues that N.J.S.A. 2C:20-2b applies to all theft offenses. It contends that petitioner's conviction of N.J.S.A. 2C:20-9, given the amount of money involved, rises to a crime of the third degree. Consequently, it argues, petitioner is disqualified by virtue of his commission of a section 86c(1) offense.

Theft and related offenses are found in Chapter 20 of the New Jersey Code of Criminal Justice, Title 2C. Section 1 of Chapter 20 sets forth the definitions to be applied. Section 2 states, in pertinent part, that:

> Conduct denominated theft in this chapter constitutes a single offenses, but each episode or transaction may be the subject of a separate prosecution and conviction. A charge of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter... (Emphasis supplied)

Prior to the Legislature's adoption of the New Jersey Code of Criminal Justice, (L. 1978, c. 95, §§ 2C:20-1, et seq., eff. September 1, 1979) the criminal statutes of this State made distinctions between larceny, embezzlement and obtaining money by false pretenses. Other that "theft of a trade secret," there was no specific statutory crime in New Jersey known as "theft." The term "theft," however, was a popular

term for common law larceny and was used to describe any intentional unlawful taking of another's property. Rudolph, et al. v. Home Indemnity Co., 138N.J. Super 125, 129 (Law Div. 1975). By enacting the Code of Criminal Justice, the Legislature effectively eliminated the distinctions between the statutory crimes of embezzlement, larceny and false pretenses to include these offenses, among others, under"theft and related offenses."

The offense to which petitioner plead guilty, N.J.S.A. 2C:20-9, "Theft by failure to make required disposition of property received," provides, in pertinent part, as follows:

> A person who purposely obtains or retains property upon agreement or subject to a know legal obligation to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition... (Emphasis supplied)

In accordance with his plea, petitioner admitted to and acknowledged guilt to a theft offense. Theft offenses are graded into "degrees" under N.J.S.A. 2C:20-2b Pursuant to subsection 2, thereunder, theft constitutes a crime of the third degree if "(a) The amount involved exceeds $500.00 but is less that $75,000.00." The amount to which petitioner admits taking exceeds $500.00. Therefore, petitioner was guilty of an offense of theft in the third degree, a disqualifying offense pursuant to section 86 c(1) of the Act.

I **CONCLUDE,** therefore, that the Division has met its burden of proof, by a preponderance of the credible evidence, and that petitioner committed a theft offense in the third degree. N.J.S.A. 2C:20-9.

Accordingly, I **CONCLUDE** that petitioner is statutorily disqualified from holding a casino employee license, pursuant to N.J.S.A. 5:12-86c(1).

Rehabilitation, pursuant to Section 90h of the Act

An applicant for a casino employee license faced with the existence of a section 86 disqualification has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his rehabilitation, pursuant to N.J.S.A. 5:12-90h. This section of the statute sets forth eight specific factors to be evaluated when a determination for rehabilitation is to be made. Those factors are as follows:

1) The nature and duties of the position applied for;
2) The nature and seriousness of the offense or conduct;
3) The circumstances under which the offense or conduct occurred;
4) The date of the offense or conduct;
5) The age of the applicant when the offense or conduct was committed;
6) Whether the offense or conduct was an isolated or repeated incident;
7) Any social condition which which may have contributed to the offense or conduct;
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 who have had the applicant under their supervision.

In consideration of petitioner's claim of rehabilitation, the following is found in this record:

1. Petitioner is presently the holder of a temporary, non-gaming casino employee license no. 76557-22 for maintenance and cleaning. He seeks to have the license made permanent. Although a casino employee license is not required for his present employment at the Trump Regency Hotel, a non-gaming property, he seeks the license to improve his opportunity for promotion and advancement in the casino industry.

2. The offenses for which petitioner was charged were serious. The charge to which he plead guilty, N.J.S.A. 2C:20-9, a crime of theft in the third degree, is a very serious offense and one which could have resulted in his incarceration. Judge Guerrera determined that there were sufficient mitigating factors which

outweighed the single aggravating factor to warrant a substantial fine, restitution of the money taken and probation of three years in lieu of prison time for petitioner.

3. and 4. Between April and November 1983, petitioner engaged in a scheme whereby he supplied paint and other materials from his employer to a contractor and appropriated the money from the sale of these items for his own use. Petitioner had recently married and used the money from the scheme to pay bills and debts. Petitioner was not in any serious financial difficulty but, rather, employed the scheme to "get a little ahead."

5. and 6. Petitioner was 32 years of age when the offense was committed. There were a series of episodes, the number of which was not revealed on the record, between April and November 1983.

7. There were no social conditions which contributed to petitioner's conduct.

8. Subsequent to his arrest and prior to the entry of his guilty plea, petitioner commenced to make restitution to his former employer for the monies he had taken. The record demonstrates that he made payments of at least $2,000 in that period which reduced the court-ordered restitution at the time of petitioner's entry of a guilty plea to one of the two charges.

The testimonial record reveals that his present supervisor at Trump Regency Hotel considers petitioner to be rehabilitated. Mr. Kenneth Hughes asserts that he has excellent employees under his supervision and he considers petitioner to be better than others. Hughes considers petitioner to be an employee that can be depended upon. He also believes that petitioner possess the good character, honesty and integrity required for licensure. Similar testimony was elicited by Robert Hingoes, former assistant director of security for Atlantis Hotel/Casino and Peter A Riverso, former assistant to the president of Atlantis.

Petitioner has successfully completed all of the conditions of the sentence imposed upon him by the court including full restitution to MAB, payment of the fine and VCCB penalty, 250 hours of community service and successful completion of his probation time. He has also expressed his remorse and regret for his conduct.

In consideration of the above factors, I **FIND** and **CONCLUDE** that petitioner has met his burden and affirmatively established his rehabilitation. There is no doubt that he will refrain from engaging in any questionable conduct in the future.

Good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2).

Pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90h of the Act, petitioner Ifert is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the applicant to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra; In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provision intended by the Legislature, it is imperative that the character and background of the applicant be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, as a standard, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of facts should have a firm belief that the fact alleged is true, i.e., that petitioner possesses the requisite good character, honesty and integrity. The standard requires more that a mere balancing of probabilities, but less that absolute certainty. A reasonable certainty is required. Lepre v., Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969)

Petitioner's present supervisor testified on petitioner's behalf asserting, among other things, that he had been made aware of petitioner's admission of guilt to criminal charges and, nevertheless, had no problem finding that petitioner was honest and demonstrated integrity in his employment. Kenneth Hughes asserted that petitioner was not only an excellent and dependable employee but, moreover, would perform beyond the assigned task. Hughes opined that petitioner was rehabilitated and the applied for license should issue.

Robert Hingos, the former assistant director of security at Atlantis, testified, among other things, that he had been engaged in law enforcement for twenty years and had arrested thousands of people; nevertheless, he testified on petitioner's behalf. Hingos opined that petitioner made a stupid mistake and that petitioner was not a thief. He also opined that petitioner's conduct was an isolated occurrence and that petitioner would absolutely not repeat the incident again. Hingos asserted that he would trust petitioner with his family and that it would be a travesty if the license petitioner applied for was not granted.

Peter Riverso, presently employed at the Trump Taj Mahal and formerly the assistant to President Hood of the Atlantis, testified on petitioner's behalf. Riverso asserted that he was aware of the circumstances whereby petitioner plead guilty. Notwithstanding, Riverso testified that he recommends petitioner for licensure because he believes that petitioner is rehabilitated and that he possesses the requisite honesty and integrity for licensure. Riverso asserted "There's nothing I wouldn't trust Bobby [Ifert] with that's mine, personally." (Tr. pp. 48-49).

Having observed petitioner and those who testified on his behalf, I **FIND** their testimony to be candid, forthright and credible. They each spoke the truth and did not hesitate to answer the questions addressed to them by petitioner's counsel and the Deputy Attorney General. In re Perrone, 5 N.J. 514, 522 (1950).

I **FIND** and **CONCLUDE** that petitioner has met his burden and has clearly and convincingly established his good character, honesty and integrity pursuant to section 89b(2) of the Act, as incorporated within section 90b.

ORDER

Accordingly, it is hereby **ORDERED** that the Division's objection to the issuance of a casino employee license to petitioner Robert Ifert, be and is hereby **DISMISSED**

It is further **ORDERED** that the permanent non-gaming casino employee license no. 76557-22 applied for by Robert Ifert be issued as soon as practical.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION** who 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

4 January 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

1/11/90
DATE

[illegible]
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 11 1990
DATE

[illegible]
OFFICE OF ADMINISTRATIVE LAW

ldr

WITNESS LIST

For the Petitioner:

Robert Ifert
Kenneth L. Hughes
Robert Hingos
Peter A. Riverso

EXHIBITS

For the Respondent:

R-1	Judgment of Conviction Dated September 14, 1984
R-2	Atlantic County Indictment No. 0768-5-84-A Dated May 29, 1984
R-3	Application for Casino Licensure Dated March 17, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-157
REGISTRATION NO. 69768-40
OAL DOCKET NO. CCC 3150-89
ORDER NO. 90-4-12

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

Complainant,

v.

JEFFREY G. JACKSON,

Respondent.

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 January 24, 1990,

IT IS on this 29th day of January 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Jeffrey G. Jackson 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3150-89
AGENCY DKT. NO. 89-157

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
JEFFREY JACKSON,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Jeffrey Jackson, respondent, pro se

Record Closed: October 31, 1989 Decided: December 15, 1989

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

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on December 6, 1988, seeking revocation of the respondent's casino hotel employee registration. The basis of the Division's complaint is its allegation that the respondent was convicted on July 13, 1987, of possession of a controlled dangerous substance (cocaine) with intent to distribute, contrary to N.J.S.A. 24:21-19a(1) and analogous to N.J.S.A. 2C:35-5. These are the issues:

1. Has the respondent been convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:35-5, possession of cocaine with intent to distribute.

2. Has the petitioner, if he has been convicted of an otherwise disqualifying offense pursuant to section 86c(1) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), affirmatively established his rehabilitation by clear and convincing evidence, pursuant to section 91d of the act.

PROCEDURAL HISTORY

By letter dated April 21, 1989, the Casino Control Commission acknowledged receipt of the respondent's request for a hearing on the Division's complaint. On April 28, 1989, 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. On July 28, 1989, Administrative Law Judge Edgar R. Holmes conducted a prehearing conference. The hearing was thereafter held before the undersigned on October 31, 1989, in Atlantic City, New Jersey. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 24 year-old resident of Pleasantville, New Jersey. He has been employed by John Johnson General Construction, Framing and Siding in Mays Landing since September 1989. According to the respondent, he is preparing to attend a carpentry vocational course which will last about 18 months. The respondent and his girlfriend support each other and their child, who is less than one year old. The respondent is a high school graduate, and he took a security course at the Casino Career Institute between November 1984 and January 1985.

The respondent holds casino hotel employee registration no. 69768-40. According to the respondent, he applied for and received this registration in August 1986. On December 27, 1986, the respondent was arrested and charged with possession of a controlled dangerous substance, possession with intent to distribute, and possession of a weapon by a convicted person. According to the respondent, he conspired with a friend and a girlfriend to sell cocaine. At the time of his arrest, he had been selling cocaine for approximately six months. Two thousand dollars which

he had obtained from the sale of cocaine was seized by the police. The respondent stated that this represented about an ounce worth of cocaine and that it would take two or three weeks to sell an ounce.

On January 15, 1987, the respondent and two others were named in a six count indictment which charged them with various drug and weapons offenses (Exhibit P-1). On June 10, 1987, the respondent entered a plea of guilty to counts two and six of the indictment, charging him with possession of a controlled substance with intent to distribute, contrary to N.J.S.A. 24:21-19a(1), which is analogous to N.J.S.A. 2C: 35-5; and possession of a weapon by a convicted person, contrary to N.J.S.A. 2C:39-7 (Exhibit P-2). On July 31, 1987, the respondent was sentenced on count two to the Atlantic County Jail for 364 days with no parole eligibility for 120 days and credit for 10 days served. The respondent was also placed on probation for a period of three years. On count six, the respondent was sentenced to 18 months probation to run concurrently with the sentence on count two. The respondent was required to forfeit the 32 caliber handgun and $2,383 which were seized when he was arrested. The remaining count against the respondent was dismissed (Exhibit P-2).

The respondent acknowledged that he had a 1985 conviction for possession of marijuana with intent to distribute. He had been arrested on November 2, 1984, in a pool room which he had been leasing. According to the respondent, he had been in the business of selling marijuana. This involved traveling to New York City where he would purchase a pound of marijuana for $500. He would then divide the marijuana into individual $5 bags. The respondent estimated that it took about two weeks to sell a pound of marijuana in this manner and it brought a return of about $1,000. According to the respondent, this sale of marijuana provided his livelihood for about 14 months.

Following his March 1985 conviction for distribution of marijuana, the respondent received a term of probation of three years. It was his testimony that he was released early from that probation. According to the respondent, rather than going to work in a lawful occupation, he took the attitude that he could earn more money selling drugs and not working as hard. He tried to be honest after his marijuana conviction but then chose to do wrong by selling cocaine. As a result, he ended up "doing time." The respondent testified sincerely that he has learned the seriousness of his illegal conduct. He realizes that people were stealing to support their cocaine habit. He acknowledges his unlawful conduct and regrets it. According to the respondent, he never again wants to be involved with drugs. He has a child

now and he wants to avoid doing anything that might send him to jail. The respondent learned how valuable his freedom is when he was incarcerated.

When the respondent was released on parole, he was required to undergo random urine tests. One or two such tests were taken and the respondent had no problem with them. It was his testimony that he had not been a cocaine user, although he had used marijuana. His involvement with any drugs ended between his arrest in December 1986 and his conviction in June 1987.

A condition of the respondent's probation was that he obtain employment. He worked as a line server at Resorts International Hotel and Casino between November 1987 and April 1988. He did not care for that work and he left that job for employment at the Show Boat Casino Hotel between April and August 1988. Following that, the respondent worked for less than a month at the Tropicana Casino Hotel as a bus greeter. He was terminated for missing work. The respondent then worked in a sales job between October 1988 and February 1989. He was then unemployed until May 1989, when he was hired at Trumps Castle Casino Hotel as a line server. The respondent held this position until the end of August 1989. He left that work to take his present position in the construction industry.

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 licensee or registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. It is the intention of the act to preclude the creation of any property right in any license permitted under the act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. Pursuant to section 91b of the act, the Commission may revoke the registration of any registrant who is disqualified on the basis of the criteria contained in section 86 of the act.

It is undisputed that the respondent was convicted upon his plea of guilty on June 10, 1987, of the offense of possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-19a(1) and analogous to N.J.S.A.

2C:35-5. This is an offense specifically listed under section 86c(1) of the Casino Control Act as a disqualifier. Therefore, I **CONCLUDE** that the respondent is subject to revocation of his casino hotel employee registration on the basis of his conviction of a disqualifying offense, pursuant to sections 86c(1) and 91b of the act.

Section 91d of the act provides that the respondent's casino hotel employee registration should not be revoked on the basis of his conviction of an offense identified in the act as a disqualifier, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under section 91d shall be considered:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

The respondent's employment as a registrant has primarily involved restaurant work. He has not been involved with gaming, but he did work for a short time as a bus greeter. The respondent took a security course at the Casino Career Institute between November 1984 and January 1985.

The respondent has twice been involved in periods of illegal sale of drugs. He was convicted in 1985 of possession of marijuana with intent to distribute. The respondent had sold marijuana for a living for about 14 months. As noted above, the respondent was convicted in June 1987 of possession of cocaine with intent to distribute. Again, the respondent made his livelihood from the sale of illegal drugs.

It is common knowledge that the use and sale of unlawful drugs are problems of great concern, both locally and nationally. The seriousness of the respondent's unlawful conduct cannot seriously be doubted. Although the respondent is still a young man of 24 years, he has during 2 discrete periods of time made his living from the sale of drugs. Both periods covered a considerable amount of time. In addition, there is no concrete evidence that any social conditions contributed to the unlawful conduct.

To his credit, the respondent has attempted to maintain lawful employment since his second conviction. In addition, he will soon be obtaining a lengthy period of vocational training in the craft of carpentry. This effort should be encouraged. Viewing all of the credible evidence in the record, including the respondent's candid testimony, it appears that the respondent intends to lead a law-abiding life.

It may be more likely than not that the respondent will succeed in his aspiration and will henceforth remain law-abiding. However, such likelihood does not satisfy his burden in this proceeding. Since he has, not one, but two, convictions for the possession of drugs with intent to distribute, insufficient time has passed since his second criminal involvement for me to be convinced that the respondent is fully rehabilitated. I believe that full rehabilitation is within the respondent's capability. Nevertheless, I **CONCLUDE** that he has not yet established his rehabilitation by clear and convincing evidence, within the meaning of section 91d of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of Jeffrey Jackson be **REVOKED**.

This recommended decision may be adopted, 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 this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

December 15, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12/19/89
Date

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 20 1989
Date

OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Indictment No. 87-01-0073A, dated January 15, 1987

P-2 Judgment of Conviction, dated July 31, 1987

For the respondent:

None

WITNESSES

For the petitioner:

Jeffrey Jackson

For the respondent:

Jeffrey Jackson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-101
REGISTRATION NO. 41699-40
OAL DOCKET NO. CCC 8833-88
ORDER NO. 89-41-23

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

Complainant,

v.

RICHARD R. JOHNS,

Respondent.

ORDER

A hearing 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 October 18, 1989,

IT IS on this 17th day of July 1990, ORDERED that the initial decision is modified as follows:

> We concur with and adopt the Administrative Law Judge's factual findings and his conclusion that the respondent's continued registration would be inimical to the policies of the Act. However, we reject the Administrative Law Judge's erroneous reference to respondent's offenses as listed statutory disqualifiers. The two offenses committed by the respondent, theft of property (fourth degree) and theft by unlawful taking (fourth degree), are disqualifying pursuant to N.J.S.A. 5:12-86(c)(2) and -86(g). Because both offenses are fourth degree, neither is a statutory disqualifier under N.J.S.A. 5:12-86(c)(1).

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8833-88
AGENCY DKT. NO. 89-101

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
RICHARD R. JOHNS,
Respondent.

James Armstrong, Deputy Attorney General, for the petitioner (Peter Perretti, Jr., Attorney General of New Jersey, attorney)

Richard R. Johns, the respondent, pro se

Record Closed: August 22, 1989 Decided: September 8, 1989

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Richard R. John's casino hotel employee registration no. 41699-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had been convicted of a criminal offense which

rendered continued registration to be inimical to the policies of the Casino Control Act (Act), pursuant to Section 86c(2), and that the respondent had committed a criminal offense which rendered continued registration to be inimical to the policies of the Casino Control Act, pursuant to Section 86c(2), by means of section 86g, and therefore, that the respondent is disqualified from registration, pursuant to section 91b.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so he could be employed in the casino industry. By complaint to the Commission, filed October 11, 1988, the Division objected to the respondent's continued registration, first asserting that the respondent had been convicted of theft of property lost, mislaid or delivered by mistake, in violation of N.J.S.A. 2C:20-6, which is a disqualifying offense under section 86c(2), and second, asserting that the respondent had committed theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, which is a disqualifying offense under section 86c(2), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. Based upon the complaint, the Commission notified the respondent on October 20, 1988, that he had the right to a hearing, and that failure to respond within 15 days could result in his registration being revoked. By application dated November 10, 1988, which was received by the Commission on November 15, 1988, the respondent requested a hearing. On November 30, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on December 5, 1988, 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 in the matter was scheduled for February 8, 1989. On February 7, 1989, the deputy attorney general requested an adjournment as he had to attend a Commission meeting on the scheduled prehearing date. This request for adjournment was granted and the prehearing conference was rescheduled for March 13, 1989. The respondent failed to appear for the prehearing conference; however, later in the day he contacted the Office of Administrative Law, indicated that he had had car trouble that morning, and requested that the prehearing conference be rescheduled. This request was granted, and the prehearing conference was rescheduled for April 21, 1989. On April 20, 1989, the respondent contacted the Office of Administrative Law and requested an adjournment as he was required to perform jury duty on April 21, 1989. This request for an adjournment was granted, and the prehearing conference was rescheduled.

A prehearing conference in the matter was held before me on May 2, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he was convicted of a violation of N.J.S.A. 2C:20-6.

B. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have committed a violation of N.J.S.A. 2C:20-3, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

A hearing was held on August 22, 1989, in the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

In 1987, the respondent, Richard R. Johns, was employed as a valet parking attendant by the Claridge Hotel and Casino. In October or November 1987, the respondent was issued a paycheck in the amount of $170.00. The respondent placed his check in his home. Then respondent had a party at his home, after which he could not find his paycheck. He reported his paycheck missing to his employer and a new paycheck was issued to him, which he cashed. Subsequently, the respondent found the original check and he cashed it at a check cashing service in Atlantic City.

On November 16, 1987, the Claridge notified the New Jersey State Police that the respondent had cashed both checks. The respondent was arrested by the State Police, and he made a statement to the State Police that he had in fact cashed both checks (P-3). The respondent was charged with theft of property lost, mislaid or delivered by mistake in violation of N.J.S.A. 2C:20-6. On February 1, 1988, the respondent pleaded guilty to the charge in Atlantic City Municipal Court and was sentenced to pay a $25 fine, $25 in court costs, and a $30 penalty to the Violent Crimes Compensation Board. The respondent paid his fine, costs and penalty on March 31, 1988 (P-4).

The respondent testified that he was experiencing financial difficulties and was behind in his rent. The mother of his child was seeking to place his daughter up for adoption, and in an attempt to retain his daughter, he had to be able to provide a home for

her. As such, when he found the original check, he cashed it in order to pay the rent. The respondent made a separate arrangement with the check cashing service and repaid the amount in full.

On December 9, 1988, the respondent was employed as a bartender at the Showboat Hotel and Casino. On that date he took $293.50 from his bank bag. The shortage was discovered during a routine audit by the hotel cashier manager. On December 30, 1988, security Investigator Margaret Woolsey of the Showboat contacted the New Jersey State Police and reported the incident. Ms. Linda Greenawalt, beverage supervisor at the Showboat, went to the Division office at the Trump Castle and signed a complaint against the respondent charging him with theft by unlawful taking in violation of N.J.S.A. 2C:20-3. The respondent was thereafter arrested, and he gave a statement to the police admitting that he had taken the money for personal reasons. The case was referred to the Atlantic City Municipal Court for prosecution; however, the case was dismissed on May 11, 1989 (P-1).

In May 1988, the respondent was promoted from the position of bar porter to bartender. His salary was supposed to be raised from $5.50 per hour to $6.86 per hour. After two months of not having received the raise in his paycheck, he contacted the payroll section of the Showboat. The respondent was informed that his supervisor had never submitted the required paperwork reflecting his promotion and raise. The respondent contacted his supervisor and was told the situation would be corrected. His raise, however, never appeared in his paycheck. Every month he would go to payroll and inquire about the status of his raise and his back pay; however, he never received either a satisfactory answer or his money. On November 15, 1988, the respondent's house, clothes and furnishing were completely destroyed by fire. He immediately went to his supervisor and payroll section to inquire about his back pay; however, it still was not forthcoming. At this time the respondent was suffering from severe mental stress. He had to take care of his daughter, find clothes for the two of them, pay rent on a new apartment and start a new life. He was experiencing severe emergency financial difficulties, and he was further

concerned that if he failed to make his child support payments of $200 per month that he could go to jail and that he might lose his daughter.[1] As a last resort, he removed the money from his bank bag which he intended to repay (P-2).

The respondent was born on May 23, 1959, and is 30 years old. He graduated from high school in 1977, and he enrolled in Atlantic County Community College that September. He enlisted in the Air Force in April 1978, and he served for over three years as a law enforcement officer in a security police squadron in Spain. He was discharged with an honorable discharge in 1981.

From 1981 through 1987, the respondent worked as a taxi cab driver. He quit this job afer he was robbed in 1987. In 1985, the respondent became employed at Harrah's Marina Hotel and Casino. He was released at the end of his probationary period because of an alleged poor attitude. His aunt died, and he requested time off to attend her funeral. This request was denied, and he became very upset. As a result, he was released from his position. From early 1986 through the summer of 1987, the respondent worked at the Claridge Hotel and Casino as a parking valet. He was terminated from this position as a result of the payroll check cashing incident. From December 1987 through May 1988, the respondent was employed as a bar porter at the Showboat Hotel and Casino. In May, he was promoted to a bartender. On or about December 15, 1988, the repsondent was terminated from this position because of his theft of money from his bank bag. Since November 1988, the respondent has been employed as a bar porter at Trump Castle Hotel and Casino.

The respondent presented one witness who testified in his behalf, and three character leters. Franklin J. Bates testified that he has known the respondent for over 15 years. They attended the same high school and were in the Air Force at the same time. Mr. Bates testified regarding the facts surrounding the two alleged incidents of misconduct in this case. He characterized the respondent as a hard-working, honest individual, who does not get in trouble.

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1 The respondent has joint custody of his daughter with the child's mother. The respondent has physical custody of the child four days a week, provides $200 a month child support, and provides all of the child's food and clothing. The child's maternal grandmother takes care of the child the other three days as the child is a burden to her mother, and it is the child's mother who has sought to place the child up for adoption.

In a letter dated August 1989, Kelly M. Harris, director of Atlantic City senior citizens programs, describes the respondent as an outstanding, self-motivated worker who has worked for the Atlantic City Senior Citizens Programs (R-1). In another letter, dated August 21, 1989, Joyce O. Ingram describes the respondent as a "responsible, energetic young man who is loyal to his family" (R-3). Finally, the Reverend J. Overton Jones, Church of St. Bernadette, in a letter dated July 31, 1989, wrote:

> I have known Richard Johns, Jr. since he was a young child. He was a dedicated young man. He attended Church regularly, was active in the C.Y.O. (Catholic Youth Organization) and the Altar Servers.
>
> Richard was always willing to help with all Parish activities at St. Monica's, 108 North Pennsylvania Avenue, Atlantic City, when I was Associate Pastor. He always seemed to me to be an upright, caring and honest young man. [R-2]

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully in substantial part. He candidly admitted his misconduct and described the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in substantial part.

FINDINGS OF FACT

1. In October or November 1987, the respondent was issued a paycheck by his employer, the Claridge Hotel and Casino, in the amount of $170.00. The respondent placed his check in his home. Then respondent thereafter could not find his paycheck. He reported his paycheck missing to his employer, and a new paycheck was issued to him which he cashed. Subsequently, the respondent found the original check and he cashed it at a check cashing service in Atlantic City.

2. The respondent was charged with theft of property lost, mislaid or delivered by mistake in violation of N.J.S.A. 2C:20-6. On February 1, 1988, the respondent pleaded guilty to the charge in Atlantic City Municipal Court and was sentenced to pay a $25 fine, $25 in court costs, and a $30 penalty to the Violent Crimes Compensation Board. The respondent paid his fine, costs and penalty on March 31, 1988.

3. The respondent was experiencing financial difficulties and was behind in his rent. The mother of his child was seeking to place his daughter up for adoption, and in an attempt to retain his daughter, he had to be able to provide a home for her. As such, when he found the original check, he cashed it in order to pay the rent.

4. The respondent made a separate arrangement with the check cashing service and repaid the amount in full.

5. On December 9, 1988, the respondent was employed as a bartender at the Showboat Hotel and Casino. On that date he took $293.50 from his bank bag. The respondent was charged with theft by unlawful taking in violation of N.J.S.A 2C:20-3. The respondent was arrested, and he gave a statement to the police admitting that he had taken the money for personal reasons. The case was referred to the Atlantic City Municipal Court for prosecution; however, the case was dismissed on May 11, 1989.

6. In May 1988, the respondent was promoted from the position of bar porter to bartender. His salary was supposed to be raised from $5.50 per hour to $6.86 per hour. His raise, however, never appeared in his paycheck. Every month he would go to payroll and inquire about the status of his raise and his back pay; however, he never received either a satisfactory answer or his money.

7. On November 15, 1988, the respondent's house, clothes and furnishing were completely destroyed by fire. He immediately went to his supervisor and payroll section to inquire about his back pay; however, it still was not forthcoming. At this time the respondent was suffering from severe mental stress. He had to take care of his daughter, find

clothes for the two of them, pay rent on a new apartment and start a new life. He was experiencing severe emergency financial difficulties, and he was further concerned that if he failed to make his child support payments of $200 per month that he could go to jail and that he might lose his daughter.

8. The respondent was born on May 23, 1959, and is 30 years old. He graduated from high school in 1977, and he enrolled in Atlantic County Community College that September. He enlisted in the Air Force in April 1978, and he served for over three years as a law enforcement officer in a security police squadron in Spain. He was discharged with an honorable discharge in 1981.

9. From 1981 through 1987, the respondent worked as a taxi cab driver. He quit this job afer he was robbed in 1987.

10. In 1985, the respondent became employed at Harrah's Marina Hotel and Casino. He was released at the end of his probationary period because of an alleged poor attitude. From early 1986 through the summer of 1987, the respondent worked at the Claridge Hotel and Casino as a parking valet. He was terminated from this position as a result of the payroll check cashing incident. From December 1987 through May 1988, the respondent was employed as a bar porter at the Showboat Hotel and Casino. In May, he was promoted to a bartender. On or about December 15, 1988, the repsondent was terminated from this position because of his theft of money from his bank bag. Since November 1988, the respondent has been employed as a bar porter at Trump Castle Hotel and Casino.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:

a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

b. 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;

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

. . . .

(2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing;

. . . .

g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may

require. 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 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, 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 or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

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

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

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

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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . .registrant." N.J.S.A. 5:12-129(1) provides for the revocation of 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 . . . registration." The Division first contends that the respondent was convicted of a violation of N.J.S.A. 2C:20-6, theft of property lost, mislaid or delivered by mistake, which constitutes a violation of N.J.S.A. 5:12-86c(2). The Division next contends, by means of N.J.S.A. 5:12-86g, that the respondent committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, which constitutes a violation of N.J.S.A. 5:12-86c(2). Accordingly, the Division contends that he is disqualified from continued registration.

(A) N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g

Section 86g provides that a licensee or registrant will be disqualified from licensure and registration because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(2) 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 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 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 in the credibility and integrity of the regulatory process and of casino operations.' N.J.S.A. 5:12-1b(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.'

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that while the respondent was only convicted of the disorderly person offense of theft of property lost, mislaid or delivered by mistake and while the respondent's conduct constitutued theft by unlawful taking in the fourth degree, neither of which is listed as a disqualifier under section 86c, that these alleged offenses are either disqualifying offenses under section 86c(2) as convictions or under section 86c(2) and section 86g as misconduct, despite the fact that such acts were not prosecuted in the criminal courts of this State.

N.J.S.A. 2C:20-6, Theft of property lost, mislaid, or delivered by mistake, provides:

> A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, knowing the identity of the owner and with purpose to deprive said owner thereof, he converts the property to his own use.

The Division established, and the respondent admitted during his testimony, that he knowingly and wrongfully cashed a payroll check, which had been previously mislaid, after he had already cashed a replacement check. The Division further established, and the respondent admitted during his testimony, that as a result of this misconduct, he had been convicted of a violation of N.J.S.A. 2C:20-6 in the Atlantic City Municipal Court. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-6 and that he has been convicted of this offense. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(3), the offense constitutes a disorderly person offense.

N.J.S.A. 2C:20-3, Theft by unlawful taking or disposition, provides in pertinent part:

> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

In order to establish the crime of theft by unlawful taking, the Division must prove two elements. First, the Division must prove that the respondent unlawfully took the property of another ($293.50 belonging to the Showboat Hotel and Casino). Second, the Division must prove that at the time the respondent took this property his purpose was to deprive the owner of the money.

With regard to the requirement of proof of a purpose to deprive another of his property, it has been held that a person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. In other words, in order to establish that the respondent acted purposely, the Division must prove by a preponderance of the credible evidence that at

the time the respondent took the property it was his conscious object to deprive the Showboat of the money. "Deprive" means (1) to withhold (or cause to be withheld) property of another permanently or for so extended a period as to appropriate a substantial portion of its economic value...or, (2) to dispose (or cause disposal) of the property so as to make it unlikely that the owner will recover it.

In this case, the respondent was upset that he had not received the raise and back pay to which he was entitled for six months. He was frustrated by the payroll section's inability to correct the situation. In November, his house burned down and he experienced severe emergency financial difficulties. As a result, he took the money from his bank bag. The respondent feloniously appropriated the money to his own use as he felt the money was owed to him by the Showboat and he was in dire need for money. (See, State v. Leicht, 124 N.J. Super. 128 (App. Div. 1973).)

The Division therefore established, and the respondent admitted during his testimony, that he knowingly and wrongfully took $293.50 from the Showboat Hotel and Casino. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-3. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2 b(3), the offense constitutes a crime of the fourth degree.

Recently, in State of New Jersey, Dept. of Law and Public Safety, Division of Gaming Enforcement v. Michael P. Waters, OAL DKT. CCC 3933-86, decided by the Commission (June 12, 1987), the Commission stated at 2-3 that:

> A distinction must be drawn between the rehabilitation from a section 86(c)(1) or (3) disqualifying offense pursuant to sections 90(h) or 91(d) of the Act and rehabilitation as an aspect of the inimical analysis. In the former situation, disqualification is established once it is shown that the respondent committed an enumerated offense. The respondent is then afforded the opportunity to affirmatively demonstrate his rehabilitation from that disqualification. It is well established that, consistent with other affirmative licensing criteria, the respondent must prove his rehabilitation by clear and convincing evidence. Application of Richard Romanishin for a Casino Employee License, Docket No. 84-EA-85 (Commission order, May 23, 1985); Application of Chester R. Brathwaite for a Casino Employee License, Docket No. A-4252-82T3 (Unpublished opinion reversing Commission decision, January 23, 1984).

> However, unlike a section 86(c)(1) or (3) situation, disqualification pursuant to section 86(c)(4) is not established upon demonstrating that the respondent committed the offense in question. Such a determination can only be made after considering all the circumstances surrounding the offense: its nature, its remoteness, and the offender's conduct subsequent to the offense, i.e., essentially the same factors which bear upon rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Commission decision, December 27, 1985); State v. Theodore Williams, Docket No. 84-288 (Commission order, May 1, 1987.)

The Commission concluded that if the Division establishes a case for the respondent's disqualification, it is "then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof), had shifted."

In the Davis case, the Commission stated at 313-314:

> 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 rehabilitation 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.

The Commission indicated that "it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis (and) . . . the inimical analysis is substantially similar to the concept of rehabilitation." The Commission concluded that:

> 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). [Id. at 314] [emphasis in original; footnote omitted]

The eight specific criteria enumerated in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d to be evaluated when a determination of rehabilitation is to be made are:

1. The nature and duties of the licensee's position or 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 licensee or 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 applicant or registrant under their supervision.

In regard to the first criterion, Richard R. Johns is a casino hotel registrant and was employed as a bar porter. As such, he does not have direct responsibilities for actual gaming activities but does come in contact with casino patrons.

Second, the respondent was convicted of a violation of N.J.S.A. 2C:20-6, theft of property lost, mislaid or delivered by mistake, while employed in the casino industry. The respondent also committed a vioaltion of N.J.S.A. 2C:20-3, theft by unlawful taking while employed in the casino industry. As these offenses are listed statutory disqualifiers, they are very serious.

Third, the seriousness of the offenses must be viewed in their appropriate context. In the first case, the respondent lost or mislaid his paycheck. He obtained a second paycheck from his employer and cashed it. Subsequently, he found his original paycheck and instead of returning it to his employer, he knowingly and wrongfully cashed it also. The respondent was experiencing financial difficulties and was behind in his rent. The mother of his child was seeking to place his daughter up for adoption, and in an attempt to retain his daughter, he had to be able to provide a home for her. While these are mitigating factors, they do not excuse a knowing theft of money from his employer. In the second case, the respondent was promoted from a bar porter to a bartender;

however, the respondent never received his raise in his paycheck even after numerous attempts to correct the situation over a period of six months. Thereafter, the petitioner's house, clothes and furnishing were completely destroyed by fire. He had to take care of his daughter, find clothes for the two of them, pay rent on a new apartment and start a new life. He was experiencing severe emergency financial difficulties, and he was further concerned that if he failed to make his child support payments of $200 per month that he could go to jail and that he might lose his daughter. Again, while these are mitigating factors, they do not allow the respondent to help himself to money in his bank bag at the casino. If he did not properly receive his raise or back pay, there are numerous legal and other channels within the casino which he could have pursued in an attempt to rectify the situation. The fact that both of these thefts were thefts of money from a casino by a casino employee makes them very serious. Such conduct directly and adversely affects the public confidence in the credibility and integrity of the regulatory process of casino gaming.

Fourth, the respondent's misconduct occurred in November 1987 and again in December 1988, when it ceased.

Fifth, the respondent was 28 years old at the time of the first offense and 29 years old at the time of the second offense. I do not believe immaturity was a factor in this case.

Sixth, the two incidents of respondent's misconduct were isolated in nature. He has not committed any other violations of the criminal laws.

Seventh, in the first case, the respondent was experiencing financial difficulties and was behind in his rent. The mother of his child was seeking to place his daughter up for adoption, and in an attempt to retain his daughter, he had to be able to provide a home for her. As a result, he cashed the lost paycheck. In the second case, the respondent was promoted from a bar porter to a bartender; however, the respondent never received his raise in his paycheck even after numerous attempts to correct the situation over a period of six months. Thereafter, the respondent's house, clothes and furnishings were completely destroyed by fire. He had to take care of his daughter, find clothes for the two of them, pay rent on a new apartment and start a new life. He was experiencing severe emergency financial difficulties, and he was further concerned that if he failed to make his child support payments of $200 per month that he could go to jail and that he might lose his daughter. As a result he took the money from his bank bag.

Eighth, the respondent has made some rehabilitative efforts. He did repay the check cashing service in full. He has been active in senior citizen programs and in his church. He has also been a responsible parent and has worked to care for his daughter. He has admitted his misconduct and has accepted full responsibility for his actions. However, at one point of his life, the respondent was a sworn law enforcement officer. As such, the respondent should have known that it was wrong for him to cash a second paycheck or take money from his bank bag.

The Commission has addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases[2] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent was a bartender. He had no responsibility for any casino gaming activity, but did have contact with casino patrons. Considering the nature of the position he held, the seriousness of the offenses, the respondent's work record in the industry, his demeanor and candor at the hearing, the fact that he abused his position of trust, the fact that he stole the money from his casino employer, the fact that he twice committed thefts from his employer, the fact that he is a former sworn law enforcement officer, his involvement in the community, and his family status, when weighed against the eight rehabilitative criteria:

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(2).

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2 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **SUSTAINED** and that registration no. 41699-40 be revoked.

It is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE.**

This recommended decision may be adopted, 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 8, 1989
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

9/11/89
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 11 1989
DATE

Jayne LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 New Jersey State Police Investigation Report, dated January 4, 1989

P-2 Statement of respondent given to State Police, dated December 30, 1988

P-3 New Jersey State Police Investigation Report, dated November 20, 1987

P-4 Complaint, warrant and judgment of conviction

P-5 Advisement of Rights purportedly signed by Richard R. Johns

For the Respondent:

R-1 Letter of Kelly M. Harris, director Atlantic City Senior Citizens programs, dated August 1989

R-2 Letter of the Reverend J. Overton Jones, Church of St. Bernadette, dated July 31, 1989

R-3 Letter of Joyce O. Ingram, dated August 21, 1989

R-4 Letter of Richard Johns

WITNESSES

For the Petitioner:

None

For the Respondent:

Franklin J. Bates
Richard R. Johns, the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-120
REGISTRATION NO. 72455-40
OAL DOCKET NO. CCC 9263-88
ORDER NO. 90-2-9

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

Complainant,

v.

TIMOTHY W. KREISCHER,

Respondent.

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; and exceptions and a reply thereto having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of January 10, 1990,

IT IS on this 23rd day of January 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9263-88
AGENCY DKT. NO. 89-120

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

Petitioner,

v.

TIMOTHY W. KREISCHER,

Respondent.

Ralph Fusco, Deputy Attorney General (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney), for Petitioner.
Guy S. Michael, Esq. (Brown & Michael), for the Respondent.

Record Closed: October 17, 1989 Decided: November 30, 1989

Before **EDGAR R. HOLMES**, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (CCC) on October 31, 1988, seeking to revoke the respondent's casino hotel employee registration. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) on December 4, 1988, to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on March 17, 1989, and a Prehearing Order was prepared identifying the issues to be determined and setting the matter down for hearing on July 21, 1989. The plenary hearing began on July 21, 1989, and was adjourned to October 17, 1989, for the completion of testimony. On October 17, 1989, the record closed.

STATEMENT OF THE CASE

The Division asserts that in or about 1986 and 1987, the respondent received certain monies in his capacity as Chairman of the Ventnor Recreation Board and commingled these monies with his own, thus rendering him unfit for continued casino hotel employee registration.

ISSUE

The precise issue to be determined at the hearing, as set forth in the prehearing order, is whether respondent's continued registration is inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86 c(2), because he is alleged to have committed a violation of N.J.S.A. 2C:20-9, failure to make a required disposition of property received.

LAW

The Casino Control Act, N.J.S.A. 5:12-1 et seq. provides that all persons who are employed in the New Jersey Casino industry be approved by the CCC. The lowest level of approval is designed for persons who are employed in casino hotels and who do not have access to the casino floor during employment. This is denominated a "registration." N.J.S.A. 5:12-91a. Persons actually employed in the casino itself must be "licensed," as opposed to "registered." N.J.S.A. 5:12-90a. Executives or key employees must possess a "key employee license." N.J.S.A. 5:12-89a.

No person convicted of certain enumerated criminal offenses, called "disqualifying offenses" in the Act, can be either registered or licensed. N.J.S.A. 5:12-86c(1), 89d, 90c and 91b. However, registrants and licensees, excepting only key licensees, may avoid disqualification pursuant to 86c(1), if they can affirmatively prove that they are rehabilitated from the conviction of a criminal offense. N.J.S.A.

prove that they are rehabilitated from the conviction of a criminal offense. N.J.S.A. 5:12-90h and 91d. Even if a person has not been convicted of an offense under the laws of this state, the Division may offer proof that the applicant, registrant or licensee committed acts or conduct which would constitute any offense listed in subsection c of section 86 of the Act. N.J.S.A. 5:12-86g. In addition, if an applicant or licensee commits any offense which indicates that the licensure or registration of the applicant would be inimical to the policy of the Casino Control Act and to casino operations, that is a disqualification from licensure or registration also. N.J.S.A. 5:12-86c(2), 89d, 90e and 91b. Finally, the case law has extended rehabilitation to the so called "inimical" offenses and made it part of the inimical analysis. Donna Davis, 8 N.J.A.R. 301, 314.

In this case, the State proceeded under the inimicality clause of the statute, N.J.S.A. 5:12-86c2, because the criminal charge originally made in the case was theft in the fourth degree, a crime not listed in section 86c(1) of the Act. In addition, the charge was dismissed pursuant to the pretrial intervention program rule. R. 3:28. Therefore, the Division also proceeded pursuant to N.J.S.A. 5:12-86g which permits the Division to establish the existence of underlying, unprosecuted conduct which amounts to an offense.

FACTUAL DISCUSSION

Timothy Kreischer, the respondent, has lived in Ventnor City all of his life. As long as Kreischer can remember, Ventnor has provided recreation for its young people. He became active in Ventnor sports programs at the age of seven and played all sports during grammar school. At the age of fourteen, Kreischer found his niche in life; he became a coach and referee. He coached the Junior Varsity level in Pirate Football and he coached basketball in the C.Y.O. league. He refereed intramural basketball at Saint James in Ventnor.

As an adult, Kreischer became an officer in the Ventnor Baseball Association. At various times, he served as secretary, vice president, umpire-in-chief and senior league commissioner. Kreischer is also active in basketball as an official and a coach. He is a board member in the Ventnor Pirates, active in the Atlantic City All Sports Association, and he is President of the Atlantic County Junior Football League. He is also the Vice Chairman of the Ventnor City Recreation Board. The City of Ventnor's

baseball leagues for children five years old to adults, street hockey, surfing contests, running races, volleyball leagues and arts and crafts opportunities. Except for high school and casino basketball games which he referees for pay, all of Kreischer's positions are voluntary and unpaid.

Kreischer is employed by the Showboat Hotel and Casino. He is an employee service coordinator. He handles non-union grievances and organizes and directs employee activities, so that even at work Kreischer is a kind of referee and coach.

The volleyball league, under the Ventnor City Recreation Board, formerly collected money from the teams as a registration fee. These monies were then used to pay for officials and supplies. There were also fees collected from sponsors and used to purchase tee shirts for the various teams. Prior to 1986, the fees were held by the director of the volleyball program. In order to tighten up controls, the Recreation Board decided that the monies should be held by Kreischer and Board member Ray Smith, in a joint account; two signatures required. Approximately $3,000 was turned over to Kreischer. Kreischer did not deposit all of the money into the bank. He kept most of it at home in a drawer.

Smith apparently had no control over the money. He simply co-signed as many blank checks as Kreischer needed to pay officials. It appears that Kreischer would put money into the bank to cover checks which had to be written in order to pay officials, although it also appears that there was a balance left in the account from time to time. He continued to keep money at home in a drawer.

On November 25, 1986, Ed Tunney, the Board member in charge of volleyball, turned over $4,399.11 to Kreischer representing registration fees collected that year. He prepared a receipt and gave a copy to Kreischer. Kreischer put this money into his drawer at home and deposited the money into the bank from time to time as needed.

In June of 1987, the Board determined to close the account and perform an audit. Kreischer turned over to the City the funds he had on hand and in the bank. The Board determined that there was a shortage of $2,405.38, although there are no supporting documents in the record for the Financial Report dated July 10, 1987 which purports to show a shortage of $2405.38. In any case, Kreischer accepted this

figure and paid $2,405.50 over to the city in order to make the city whole. He says he paid the money over only because he was responsible for the money, not because he used the money for his own debts.

Kreischer was interviewed by the Atlantic County Prosecutor's Office, charged with theft of $500, contrary to N.J.S.A. 2C:20-9, denoted as theft by failure to make required disposition of property received. The statute is a recodification of the old embezzlement statute. Because the amount was stated as $500, it is classified as a fourth degree offense. N.J.S.A. 2C:20-2b(3). Kreischer was later granted pretrial intervention and the charge was dismissed.

During Kreischer's initial interview on August 19, 1987, he told the investigators that he never received the $2,405 alleged to be missing, but he acknowledged that he twice used the Board's money to pay his own debts. He recalled paying $1.60 to the paperboy from the drawer containing Recreation Board funds and he recalled obtaining a certified check with funds from the joint bank account for approximately $2,000 in order to pay the New Jersey State Lottery Commission. Kreischer, at that time, operated a store which sold lottery tickets. He claimed that to the best of his knowledge, he replaced the lottery money in the account.

Kreischer gave a second statement the following day, August 20, 1987. The statement reveals his complete financial ineptitude. Nevertheless, he claimed to be only a few hours short of an accounting degree from prestigious Saint Joseph's University in Philadelphia. In the second statement, Kreischer reaffirmed his previous statement which included his explanation that he borrowed from the Board's account to pay a lottery bill.

At the hearing, Kreischer introduced bank deposit and withdrawal records for the years in question. He called our attention to the fact that the bank records do not substantiate his claim that he used the Board's account to pay the Lottery Commission. There is no record of a check being drawn anywhere near $2,000. In fact, the largest check drawn was $390. As a result, Kreischer disavowed his earlier statement to the Prosecutor's Office that he used Board funds to pay the Lottery Commission. He says he only thought about doing it but must not have done it

because the bank records do not reveal such a withdrawal or check cashed in that amount.

Kreischer attempts to explain his earlier statement to the police as an exercise in absolute honesty. He tried so hard to tell the truth he says, that he even divulged thoughts he had about using the Board's money; thoughts which the pressure of interrogation hypostatized. He now realizes that he was mistaken, but cannot account for the missing money except to say that he must not have received it.

On the other hand, the Deputy Attorney General suggests that if no check was drawn on the Board's account to pay the Lottery Commission, then Kreischer must have obtained cash from the drawer in that amount in order to purchase a certified check from the Bank. Kreischer testified that the Lottery Commission only accepted certified checks. That Kreischer used cash would also be my hunch, if I stood in the shoes of the Division. It is the most probable explanation once you have concluded that $2400 was in fact, missing from the Board's account. The difficulty is that the proofs on the issue, absent a confession from Kreischer, are not convincing. The evidence against Kreischer, not including his statements to the Prosecutor's Office, hardly proves a theft. The purported financial report is no evidence that a shortage exists, it is only good evidence that the Board's decision to turn over its accounts to the City was well taken. It contains no more than a few rough calculations; no one came forward to explain it; standing alone it is incapable of conveying any impression that a shortage existed in the volleyball accounts for 1986-1987.

In order to conclude that a theft occurred, one has to rely on Kreischer's own incriminating statements and actions. He paid off the shortage, but he says he did so only because his own sloppy bookkeeping methods created the difficulty. He was, he claims, morally responsible.

He told the police he used the money to pay the Lottery Commission, but thought he paid it back. He told them he drew a check on the Board's account and used it to purchase a certified check for the Lottery Commission. But the bank records reveal that no such check was ever drawn on the Board's account.

These inconsistencies leave Kreischer's reputation for financial responsibility, good character, honesty and integrity in shambles.

But these are qualities required of persons who aspire to work on the casino floor, not mere registrants, such as Kreischer. In addition, Kreischer has overcome the difficulties presented by his defalcation, if indeed there was one, in the very community in which his troubles arose. He is again the Vice Chairman of the city's Recreation Board, the alleged victim of his alleged crime. The only difference is that he no longer has the keeping of other people's money.

In his job, he has no financial responsibilities either. He tries to resolve disputes and he organizes games, two things that he is very good at doing, having spent a lifetime providing children and adults with recreational opportunities and refereeing the same games in Ventnor City.

Kreischer is highly respected in his community. His neighbors and co-volunteers like him and trust their children to his care. Except for this one incident, he has never been in trouble with the law.

In the position which Kreischer works, he is no danger to the casino industry. He poses no threat to the integrity of gaming or the policy of the Casino Control Act.

I **CONCLUDE** that Kreischer's continued registration is not inimical to the policy of the Casino Control Act and to casino operations.

ORDER

It is hereby **ORDERED** that the Division's complaint requesting the revocation of the respondent's casino hotel employee registration be **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 30, 1989
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

12-5-89
DATE

Barbara Curt
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 5 1989
DATE

Jayne LaVecchia/K
OFFICE OF ADMINISTRATIVE LAW

ldr

WITNESS LIST

For the Petitioner:

Timothy Kreischer

For the Respondent:

Scott Becker
Timothy Kreischer
Tom Greene
Joe Calvi
Nick Burzichelli
John O'Brien

EXHIBITS

For the Petitioner:

P-1	Statement dated 8/19/87
P-2	Statement dated 8/20/87
P-3	Copy of Criminal Complaint

For the Respondent:

R-1	Copy of signature card
R-2	Receipt number 033
R-3	Receipt number 2528
R-4	Accounting sheet
R-5	Bank statements

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-334
APPLICATION NO. 074432-22
REGISTRATION NO. 075240-40
OAL DOCKET NO. CCC 1886-89
ORDER NO. 90-8-5

APPLICATION OF KENNETH M. LEEDS, JR.
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 February 21, 1990,

IT IS on this 28th day of February 1990, ORDERED that the initial decision is modified as follows:

> The record does not support the administrative law judge's assertion that the applicant pled guilty to five drug-related charges including possession of a controlled dangerous substance (CDS) (marijuana) over 25 grams and possession of CDS with intent to distribute. Rather, the record indicates that the applicant was convicted of possession of under 25 grams of marijuana.

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

ORDER NO. 90-8-5

IT IS FURTHER ORDERED that Kenneth M. Leeds, Jr. is prohibited from reapplying for or obtaining 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 this denial shall not affect Kenneth M. Leeds, Jr.'s current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly/nm

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1886-89
AGENCY DKT. NO. 89-EA-334

KENNETH M. LEEDS, JR.,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Kenneth M. Leeds, Jr., petitioner, pro se
Ralph Fusco, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: November 17, 1989 Decided: December 27, 1989

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) on January 24, 1989, objecting to the issuance of a casino employee license to petitioner, Kenneth M. Leeds, Jr. The Division alleges, among other things, that petitioner committed acts which statutorily disqualifies petitioner from holding a casino

employee license. It further alleges that petitioner was in receipt of Unemployment Insurance benefits (UIB) to which he was not entitled which brings into questions petitioner's good character, honesty and integrity as required for licensure under section 89b(2) of the Casino Control Act (Act).

On March 10, 1989, this matter was transmitted to the Office of Administrative Law (OAL) 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 conducted on July 28, 1989 before Administrative Law Judge (ALJ) Edgar R. Holmes. A plenary hearing was held on November 17, 1989, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record was considered closed on that date.

ISSUES

The issues to be resolved by this tribunal are as follows:

A. **Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c 1, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: theft by deception in the third degree, contrary to N.J.S.A. 2C:20-4, by receiving Unemployment Insurance benefits (over $500.), to which he was not entitled. The conduct occurred in 1984 and 1985.**

B. **Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) and 90b.**

C. **Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.**

UNCONTESTED FACTS

The material facts in this matter are either admitted by petitioner or they are uncontested. The following recital, therefore, constitutes my **FINDINGS OF FACT** in this matter:

Petitioner is presently 26 years of age and resides with his wife in Absecon, New Jersey. He is a member of the United Brotherhood of Carpenters, Local #623 and is presently employed by Baumgardner Construction., Inc. of Atlantic City and Pleasantville, New Jersey. During his employment with Baumgardner, beginning May 16, 1988, petitioner has been promoted in job positions from that of general helper to upholstery laborer and now is employed as a carpenter apprentice (J-1).

Petitioner is an applicant for a casino employee license and is the holder of casino hotel employee registration no. 075240-40. He was employed by Harrah's Marina Hotel and Casino for approximately one year as a bar porter under his registration. He was terminated for absenteeism and is not now employed in the casino industry. The Division does not seek to revoke petitioner's casino hotel employee registration.

In or about 1984, petitioner was unemployed and collecting UIB. Petitioner's father was employed as a foreman at Dynalectric Corp. where petitioner was hired as a draftsman in 1984. Petitioner worked at Dynalectric while collecting UIB and failed to report his employment to the Division of Unemployment and Disability Insurance. Petitioner collected $3,700 in UIB from August 21, 1984 through January 15, 1985 while gainfully employed. Petitioner, who admits to the offense, asserted that he was earning $160 per week at Dynalectric and had the expenses of a new motorcycle, a car and rent to meet. Petitioner appeared at an Unemployment office to sign a "Work Search," however, he did not advise the office of his employment. As of October 26, 1988, petitioner had paid $101.73 in restitution. The total amount owed by petitioner as of that date was $4,205.56 which included the principal, penalty and interest. Petitioner asserted he had made subsequent payments of approximately $25 per month in restitution, however, he failed to produce proof of his assertion. He believes that his debt to the Division of Unemployment remains in excess of $2,000.

Petitioner's arrest record reveals, among other things, that on August 22, 1987, he was arrested by the Galloway Township Police and charged with simple assault in violation of N.J.S.A. 2C:12-1a(1) upon a complaint by a Michael Schurig of Absecon, New Jersey. Petitioner testified that he was in a bar with his cousin when a drunken brawl broke out. Petitioner stepped into the fray to protect his cousin and

immediately thereafter left the bar. Petitioner was subsequently arrested in Absecon, New Jersey.

On September 8, 1987, petitioner appeared before the Galloway Township Municipal Court where he entered a plea of guilty to the charge of simple assault and paid a fine of $100, plus $25 court costs and $30 to the Violent Crime Compensation Board.

On December 7, 1984, petitioner was a passenger in a motor vehicle which was stopped by the New Jersey State Police for failure to display an inspection sticker. An arrest occurred at the Toms River Toll Plaza of the Garden State Parkway where, after the motor vehicle stop, the State Police discovered, among other things, burned marijuana cigarettes in the ashtray and center console of the vehicle; a large plastic bag of marijuana in the trunk of the vehicle; a mid-size paper bag of alleged methamphetamine and a brass knuckle/knife in a sheath. A pat down search of petitioner revealed two (2) marijuana cigarettes in his shirt pocket. Petitioner, the driver of the motor vehicle and another passenger were placed under arrest. On February 26, 1985, petitioner appeared before Municipal Court Judge James Liquori of the Dover Township Municipal Court. Petitioner entered a plea of guilty to five charges including the charge of possession of Controlled Dangerous Substance (CDS) (marijuana) over 25 grams and possession of CDS with Intent to Distribute, in violation of N.J.S.A. 24:21-20(a)4 and N.J.S.A. 24:21-19(a)1 respectively. The Court granted petitioner a conditional discharge on all counts.

In or about August 1979, when petitioner was 16 years of age, he was arrested as a juvenile for receiving stolen property. Petitioner asserted that he had purchased a drill from a friend who had stolen the property from another.

Petitioner offered no documents nor witnesses on his behalf.

DISCUSSION OF LAW AND CONCLUSIONS

I. N.J.S.A. 5:12-86c(1) As Incorporated Within Section 86q of the Act

The Act, under section 86c(1), mandates that a person be disqualified from licensure who has been convicted of "any offense in any jurisdiction which would

be ..." any of the enumerated offenses under the New Jersey Code of Criminal Justice, Title 2C of the New Jersey Statute. Section 86g of the Act provides that the Commission shall deny a casino license to any applicant who is disqualified by " ... any act or acts which would constitute any offense under subsection c ... even if such conduct has not or may not be prosecuted under the criminal laws of this State ..." Petitioner admits that he was in receipt of UIB in the amount of $3,700 to which he was not entitled. The Division contends that petitioner improperly received the UIB and that such receipt constitutes an offense which is analogous to "Theft by deception" pursuant to N.J.S.A. 2C:20-4. The Division concedes that petitioner was not prosecuted for the offense but, nevertheless, it asserts that he is disqualified because the amount involved exceeded $500 and constitutes a crime of the third degree pursuant to N.J.S.A. 2C:20-2b (2).

The offense of Theft by Deception, N.J.S.A. 2C:20-4 provides as follows:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

The grading of theft offenses is found at N.J.S.A. 2C:20-2b. and, in pertinent part, provides that:

> (2) Theft constitutes a crime of the third degree if:
> (a) The amount involved exceeds $500.00 but is less than $75,000.00;

An applicant is disqualified under section 86c(1) of the Act if he or she has been convicted of theft and related offenses which constitute crimes of the second or third degree, N.J.S.A. 2C:20-1 et seq. It is not disputed that petitioner was not convicted of the offense. However, pursuant to section 86g of the Act, petitioner is disqualified even if he has not been prosecuted for the offense.

Accordingly, I **FIND** and **CONCLUDE** that the Division has met its burden of proof by a preponderance of the credible evidence that petitioner committed a violation analogous to N.J.S.A. 2C:20-4, theft by deception, when petitioner received UIB in an amount of $3,700 to which he was not entitled. I, therefore, **CONCLUDE** that petitioner is statutorily disqualified from casino licensure, pursuant to section 86c(1) of the Act as incorporated within section 86g.

II. N.J.S.A. 5:12-89b(2) as Incorporated Within Section 90b of the Act

Pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b of the Act, petitioner Leeds is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra; In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, as a standard, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have firm belief that the fact alleged is true; i.e., that petitioner possesses the requisite good character, honesty and integrity The standard requires more than a mere balancing of probabilities, but less than

absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); German v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Petitioner offered no documents or witnesses in support of his contention that he possesses the qualities of good character, honesty and integrity. He asserts that he possesses the qualities and that his partial repayment of the debt to the Division of Unemployment and Disability is proof of his good character, honesty and integrity. Petitioner failed to produce any evidence of his asserted restitution by way of documentation as to the amounts repaid or the program, if any, of a repayment plan. Petitioner's testimony alone, is not sufficient to meet his burden.

I **CONCLUDE**, therefore, that respondent has failed to establish, by clear and convincing evidence, his good character, honesty and integrity for casino licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b of the Act.

III. N.J.S.A. 5:12-90h

An applicant for licensure in a disciplinary proceeding faced with the existence of one or more section 86c statutory disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his rehabilitation, pursuant to section 90h of the Act. This section sets forth eight specific criteria to be evaluated when a determination of rehabilitation is to be made. Section 90h provides, in pertinent part, as follows:

> (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 (licensee) 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 recommendation of persons who have or have had the applicant (licensure) under their supervision.

1. Petitioner, who presently holds a casino hotel employee registration, has now applied for a casino employee license to act as an alcoholic beverage employee. In such an employment position, petitioner would have direct and substantial contact with casino patrons.

2. The offense of knowingly collecting UIB to which he was not entitled is a serious offense. Petitioner acknowledges and readily admits that he received the benefits. He asserts, moreover, that it was a stupid act to which he expressed regrets of having had committed.

3. Petitioner was unemployed and in receipt of UIB when, through his father, he was employed by Dynalectric Corp. Petitioner failed to advise the Division of Unemployment of his employment status and continued to collect UIB benefits for approximately five (5) months subsequent to his employment. Petitioner contends that he was earning only $150 to $160 per week and had to maintain a new motorcycle, an automobile and pay his rent. Therefore, he did not report his employment to the Division of Unemployment.

4. The offense was continuous commencing on or about August 21, 1984 and terminating on or about January 15, 1985.

5. Petitioner's date of birth is April 14, 1963. Therefore, he was 21 years of age in 1984-85 when he committed the offense.

6. As demonstrated in no. 4 above, the offense was a continuous, repeated offense covering a period of approximately five (5) months.

7. There were no social conditions extant which contributed to the offense.

8. Petitioner produced no evidence of rehabilitation by way of counseling or psychiatric treatment; any academic or vocational training or schooling; or the recommendation of any persons who possess knowledge of the offense.

Having considered all of the eight factors enumerated in section 90h of the Act and having given fair weight thereto, I am not persuaded that petitioner has met his statutory burden of establishing rehabilitation. Considering, among other things, the amount of UIB received by petitioner in 1984-85 and his failure to make full restitution some four years later, I **FIND** and **CONCLUDE** that his rehabilitation is incomplete.

ORDER

Accordingly, it is **ORDERED** that the application of Kenneth M. Leeds, Jr., for a casino employee license be and is hereby **DENIED** and that petitioner's appeal be **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

27 December 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

1/10/90
DATE

Tim Ward
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 10 1990
DATE

Janice Kleckner
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESSES

For the Petitioner:

Kenneth M. Leeds, Jr.

For the Respondent:

Kenneth M. Leeds, Jr.

EXHIBIT LIST

For the Petitioner:

J-1 Letter

For the Respondent:

R-1 Letter
R-2 Balance Statement
R-3 Notice of Hearing
R-4 Criminal Complaint
R-5 Police Report
J-1 Letter

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-265
REGISTRATION NO. 074311-40
OAL DOCKET NO. CCC 2365-89
ORDER NO. 90-10-7

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

Complainant,

v.

PATRICIA JOAN LENAHAN,

Respondent.

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; and the Commission having considered the entire record of these proceedings at its public meeting of March 7, 1990,

IT IS on this 21st day of March 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2365-89
AGENCY DKT. NO. 89-265

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
PATRICIA JOAN LENAHAN,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for the petitioner (Peter N Perretti, Jr., Attorney General of New Jersey, attorney)

Patricia Joan Lenahan, the respondent, pro se

Record Closed: December 28, 1989 Decided: January 22, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Patricia Joan Lenahan's casino hotel employee registration no. 74311-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1), and therefore, she is disqualified from registration, pursuant to section 91b. The respondent contended that she was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so she could be employed as a cook at the Claridge Hotel and Casino. By complaint to the Commission, filed March 7, 1989, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of theft by unlawful taking (third degree), in violation of N.J.S.A. 2C:20-3, which is a disqualifying offense under section 86c(1). Based upon the complaint, the Commission notified the respondent on March 9, 1989, that she had the right to a hearing, and that failure to respond within 15 days could result in her registration being revoked. By application dated March 21, 1989, which was received by the Commission on March 23, 1989, the respondent requested a hearing. On March 28, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on April 3, 1989, 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 in the matter was held before me on June 22, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, to wit: N.J.S.A. 2C:20-3, theft by unlawful taking.

B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

A hearing was scheduled for November 3, 1989. That hearing was adjourned for personal illness, and the hearing was rescheduled. A hearing was held on December 28, 1989, in the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On April 28, 1984, the respondent, Patricia Joan Lenahan, was employed as an undercover security employee at Bradlees Department Store in Ventnor, New Jersey. Ms. Lenahan was having an affair with another Bradlees employee who was involved with others who were unlawfully removing merchandise from the store. For approximately two months prior to April 28, 1984, Ms. Lenahan's paramour tried to persuade Ms. Lenahan to become involved in the groups' activities and offered her various items of stolen merchandise. Ms. Lenahan, however, refused. The group

would remove merchandise from the store and store it in the security office as evidence in shoplifting cases until they were ready to remove it from the store.

On April 28, 1984, the respondent consented to help the group load the stolen merchandise on their truck after store hours. In order to implicate her, Richard Wyzykowski, a Ventnor police officer who was a member of the group, gave the respondent a watch to load on the truck, which she did. Unbeknown to the group, the store was under surveillance that night by a task force from the Atlantic County Prosecutor's Office and police agencies. The group was subsequently apprehended.

On June 21, 1984, the respondent was indicted along with four other individuals by the Atlantic County Grand Jury in Indictment No. 0931-6-84C Inv.. The respondent was charged with two counts of conspiracy to commit theft, in violation of N.J.S.A. 2C:5-2; and two counts of theft by unlawful taking (third degree), in violation of N.J.S.A. 2C:20-3. [P-1] On July 9, 1984, the respondent entered a plea of not guilty to the indictment (P-3). Two of her accomplices who faced additional charges applied peer pressure on the respondent to plead guilty. If they all pleaded guilty, the prosecutor would seek a lighter sentence; however, if one of the group decided to proceed to trial, then it was threatened that all five would go to trial. On August 20, 1984, the respondent retracted her plea of not guilty and entered a plea of guilty to one count of theft by unlawful taking (third degree). This plea was rejected by the court on October 4, 1984, but was re-entered and accepted on December 10, 1984. The respondent was sentenced to probation for one year, to perform 100 hours of community service, to pay a $500 fine and to pay a $25 Violent Crimes Compensation Board penalty. The remaining counts of the indictment against the respondent were dismissed. [P-3]

The respondent was required to pay her fine in $15 per week installments. After paying $150 of her fine, the respondent refused to pay the fine as she felt she had not actually taken anything. She just helped load the truck and did not keep any of the merchandise. In addition, the respondent lost her job at a Gulf gas station because of the publicity received in the local press concerning her conviction.[1] As a result of losing her job, the respondent had no money with which to pay the fine. On March 14, 1986, the respondent was charged with a violation of probation, and

---

1 The crime received some notoriety as at least one of the group was a local police officer.

she entered a plea of guilty to that charge. The respondent was sentenced to serve 30 days in the Atlantic County Jail, her probation was terminated, and any and all conditions were vacated (P-4). After serving her jail sentence, the respondent was no longer on probation, no longer had to pay the fine, and no longer had to perform community service.

The respondent was born on May 25, 1962. She is currently 27 years old and was 22 years old at the time of the commission of the offense. She was raised in a poor family in Los Angeles, CA. She was the youngest of four sisters. Her formative years were full of turmoil. Her older sister was involved in drugs, and her home life was full of upheaval. Between the ages of twelve and seventeen, the respondent was in and out of a total of twelve reform schools, other institutions and two mental institutions. At 17 years old, she moved to New Jersey.

In 1981, the respondent obtained a casino employee license and worked in the security department of the Playboy Hotel and Casino in Atlantic City. She voluntarily left the casino industry in order to go to work in other industries. Her casino employee license was not renewed and it expired. In addition to working at Bradlees, the respondent has held numerous jobs at various gas stations and restaurants. The respondent attended culinary school at Atlantic County College in 1987. She obtained employment as a pantry worker at the Trump Plaza Hotel and Casino. After nine months, she left that job in order to accept a position as a cook at the Sands Hotel and Casino. She left the Sands after nine months in order to accept a higher paying job as a cook at the Claridge Hotel and Casino. She has worked at the Claridge for one year and two months. Her job performance at the Claridge has been good, she has received two pay raises and is not at full rate, and she is the only female cook employed by the Claridge in a specialty restaurant.

The respondent has been arrested three other times. She was first charged with assault and terroristic threats. One of the respondent's co-workers at Bradlees threatened to burn the respondent's house if the respondent did not accept the plea agreement. Ms. Lenahan responded by stating, "if you burn my house, I'll blow up yours." The charges in this case were dismissed. In 1986, she was charged with theft from a gas station. The respondent was found not guilty after trial. Finally, the respondent had been having a relationship with an individual for seven years. Her paramour's mother disapproved of the relationship and on several occasions, the mother would call the police. In 1987, the mother had the respondent arrested on

charges of assault and terroristic threats. These charges were subsequently dismissed.

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, she has a direct interest in the outcome and a bias in these proceedings. However, during both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully in every regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. She was extremely open, honest and frank to the point that at times she was brutally honest. She was one of the most sincere and credible witnesses that has ever appeared before me. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

FINDINGS OF FACT

1. On April 28, 1984, the respondent, Patricia Joan Lenahan, was employed as an undercover security employee at Bradlees Department Store in Ventnor, New Jersey.

2. On April 28, 1984, the respondent consented to help a group of co-workers who were unlawfully removing merchandise from the store, load the merchandise on their truck after store hours. The responent loaded a watch on the truck.

3. On June 21, 1984, the respondent was indicted along with four other individuals by the Atlantic County Grand Jury in Indictment No. 0931-6-84-C Inv. The respondent was charged with two counts of conspiracy to commit theft, in violation of N.J.S.A. 2C:5-2, and two counts of theft by unlawful taking (third degree), in violation of N.J.S.A. 2C:20-3.

4. On July 9, 1984, the respondent entered a plea of not guilty to the Indictment (P-3).

5. On August 20, 1984, the respondent retracted her plea of not guilty and entered a plea of guilty to one count of theft by unlawful taking (third degree). This plea was rejected by the court on October 4, 1984, but was re-entered and accepted on December 10, 1984.

6. The respondent was sentenced to probation for one year, to perform 100 hours of community serivce, to pay a $500 fine and to pay a $25 Violent Crimes Compensation Board penalty. The remaining counts of the indictment against the respondent were dismissed.

7. The respondent was required to pay her fine in $15 per week installments. After paying $150 of her fine, the respondent refused to pay the fine as she felt she had not actually taken anything. In addition, the respondent lost her job at a Gulf gas station because of the publicity received in the local press concerning her conviction. As a result of losing her job, the respondent had no money with which to pay the fine.

8. On March 14, 1986, the respondent was charged with a violation of probation, and she entered a plea of guilty to that charge. The respondent was sentenced to serve 30 days in the Atlantic County Jail, her probation was terminated, and any and all conditions were vacated. After serving her jail sentence, the respondent was no longer on probation, no longer had to pay the fine, and no longer had to perform community service.

9. The respondent was born on May 25, 1962. She is currently 27 years old and was 22 years old at the time of the commission of the offense.

10. She was raised in a poor family in Los Angeles, CA. She was the youngest of four sisters. Her formative years were full of

turmoil. Her older sister was involved in drugs, and her home life was full of upheaval. Between the ages of twelve and seventeen, the respondent was in and out of a total of twelve reform schools, other institutions and two mental institutions. At 17 years old, she moved to New Jersey.

11. In 1981, the respondent obtained a casnio employee license and worked in the security department of the Playboy Hotel and Casino. She voluntarily left the casino industry in order to go to work in other industries. Her casino employee license was not renewed and it expired.

12. In addition to working at Bradlees, the respondent has held numerous jobs at various gas stations and restaurants.

13. She obtained employment as a pantry worker at the Trump Plaza Hotel and Casino. After nine months, she left that job in order to accept a position as a cook at the Sands Hotel and Casino. She left the Sands after nine months in order to accept a higher paying job as a cook at the Claridge Hotel and Casino. She has worked at the Claridge for one year and two months. Her job performance at the Claridge has been good, she has received two pay raises and is now at full rate, and she is the only female cook employed by the Claridge in a specialty restaurant.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> b. 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;

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

(1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . . .

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

. . . .

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. 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 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . .registrant." N.J.S.A. 5:12-129(1) provides for the revocation of 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 . . . registration." The Division contends, that the respondent committed and was convicted of a violation of N.J.S.A. 2C:20-3, theft by unlawful taking (third degree), which constitutes a violation of N.J.S.A. 5:12-86c(1), and that, accordingly, she is disqualified from continued registration.

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's conviction of a violation of N.J.S.A. 2C:20-3 disqualifies the respondent from continued registration.

N.J.S.A. 2C:20-3, Theft by unlawful taking or disposition, provides in pertinent part:

a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

The Division established, and the respondent admitted during her testimony, that she knowingly removed a watch from Bradlees Department Store and placed it in a truck to be removed by her accomplices. The Division further established, and

the respondent admitted during her testimony, that she was convicted in Superior Court of one count of theft by unlawful taking in violation of N.J.S.A. 2C:20-3. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-3 and that the respondent was convicted of a violation of N.J.S.A. 2C:20-3. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-91d

A 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. 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 registrant's position;

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

In regard to the first criterion, Patricia Joan Lenahan is a casino hotel registrant and is employed as a cook. As such, she does not have direct responsibilities for actual gaming activities, does not come in contact with casino patrons, and does not handle any money.

Second, the respondent committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, on one occasion prior to her current employment in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent was a security employee at Bradlees Department Store and it was her duty to prevent thefts. She obviously breached that duty and breached the trust reposed in her. This is an aggravating factor; however, there are mitigating factors in this case also. Her paramour pressured the respondent for two months to join other employees who were removing merchandise from the store. When the respondent finally weakened and consented, all she did was load a watch on their truck. She did not keep the watch for herself, receive any other merchandise from the theft, or receive any proceeds from any sale of any of the merchandise.

Fourth, the respondent's misconduct occurred on April 28, 1984, when it ceased.

Fifth, the respondent was 22 years old at the time of the first offense. Immaturity may have been a factor in this case.

Sixth, the respondent's misconduct was isolated in nature. She has not been convicted of any other violations of the criminal laws. While she does have three subsequent arrests, she was either acquitted or the charges were dismissed.

Seventh, the respondent was raised in a poor family, and she did not graduate from high school. Her formative years were full of turmoil, exposure to drug involvement by her sister, and her home life was full of upheaval. Between the ages of 12 and 18, she lived in a total of 12 reform schools, other institutions and two mental institutions. She was always locked up in girls schools and was confused. In 1984, the respondent was living with someone who was the cause of much of her problems through peer pressure.

Eighth, the respondent has made some rehabilitative efforts. In 1987, she attended culinary school at Atlantic County College. She has worked in the casino industry and been a member of her union for nearly three years. She has progressed from a pantry worker to being the only female cook in a specialty restaurant at the Claridge. She has received two pay raises in the last year, and her work performance has been good. She is now on her own and is self-sufficient. She is active in the South Jersey Against AIDS Society. She admits her misconduct, is very remorseful, has learned from her misconduct, and was brutally honest at the hearing.

The Commission has addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases[2] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent is a cook. She has no responsibility for any casino gaming activity and does not have contact with casino patrons. Considering the nature of the position she holds, the respondent's work record in the industry, her demeanor and extreme candor at the hearing, the fact that she abused a position of trust, the fact that she stole merchandise from her employer, the isolated nature of her offense, her limited involvement in the community, her present and past family life, and her expressed remorse when weighed against the eight rehabilitative criteria:

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2 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. NO. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. NO. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-91d.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE**.

This recommended decision may be adopted, 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, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 25 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Superior Court of New Jersey, Atlantic County, Indictment No. 0931-6-84-C Inv., filed June 21, 1984

P-2 Not in evidence

P-3 Judgment of Conviction, dated December 10, 1984

P-4 Judgment of Convicton in Violation of Probation, dated March 14, 1986

For the Respondent:

None

WITNESSES

For the Petitioner:

Patricia Joan Lenahan, the respondent

For the Respondent:

Patricia Joan Lenahan, the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-304
LICENSE NOS. 000239-11; 001162-60
OAL DOCKET NO. CCC 1016-89
ORDER NO. 90-22-5

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

Complainant,

v.

RICHARD B. LEOSE,

Respondent.

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 May 30, 1990,

IT IS on this 21st day of June 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino key employee license and gaming instructor license are revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Richard B. Leose 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /RM
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1016-89
AGENCY DKT. NO. 87-304

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RICHARD B. LEOSE,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Kenneth F. Hense, Esq., for respondent (McGlynn, Reed, Hense and Pecora, attorneys)

Record Closed: January 10, 1990 Decided: February 27, 1990

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

STATEMENT OF THE CASE

This matter concerns the amended complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on March 2, 1988, seeking revocation of the respondent's casino key employee license and gaming instructor license, based upon the allegation that the respondent has committed disqualifying offenses pursuant to sections 86c(1) and (2) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The respondent's licenses were suspended by order of the Casino Control Commission dated March 20, 1987. These are the issues:

1. Has the respondent committed acts which constitute the offenses of conspiracy to commit theft, contrary to N.J.S.A. 2C:5-2, and theft by unlawful taking (3rd degree) or theft by deception (3rd degree), contrary to N.J.S.A. 2C:20-3 or 4, which would be disqualifiers from licensure pursuant to section 86c(1), 89d, and 90e of the Casino Control Act, even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the Act.

2. Has the respondent committed acts which constitute the offenses of theft by unlawful taking or by deception, contrary to N.J.S.A. 2C:20-3 or 4, or misconduct in office or commercial bribery, contrary to N.J.S.A. 2C:21-9 and 10. and if so, would his continued licensure as a casino key employee and gaming instructor be inimical to the policy of the Casino Control Act and to Casino operations, pursuant to section 86c(2) of the Act, even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the Act.

3. With reference only to the respondent's licensure as a gaming instructor, if he has committed an otherwise disqualifying offense pursuant to section 86c(1) of the Act, has he affirmatively established his rehabilitation by clear and convincing evidence, pursuant to sections 90h and 92b of the Act.

4. Has the respondent established by clear and convincing evidence that he possesses the good character, honest and integrity required for licensure as a casino key employee and gaming instructor, pursuant to sections 89b(2), 90b and 92b of the Act.

PROCEDURAL HISTORY

By letter filed February 1, 1989, counsel for the respondent notified the Casino Control Commission that the respondent had completed a pre-trial intervention program and that a criminal indictment against him had been dismissed. The Commission thereafter activated the respondent's request for a hearing concerning the Division's complaint. On February 9, 1989, this matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1

A telephone prehearing conference was held on May 5, 1989. The hearing was thereafter held as scheduled on October 5, 1989, in Atlantic City, New Jersey. At the conclusion of the hearing session, counsel for the parties requested an opportunity to take exhibits R-2 and R-3, have them photocopied, and then return them for inclusion in the record. This request was granted. Exhibit R-3 was returned on October 19, 1989. Exhibit R-2 was returned on January 10, 1990. The record closed on that date.

FINDINGS OF FACT

Some of the material facts in this matter are undisputed. The respondent is a 50-year-old resident of Marmora, New Jersey. He was issued gaming instructor license number 11620-60 and key employee license number 239-11.

The respondent testified that he was first licensed as a floor person and gaming instructor in 1979. He was put in charge of all Caesar's Atlantic City craps training programs and he taught craps at the community college. According to the respondent, he received the first key employee license at Caesar's and he became an assistant shift manager.

In 1983, the respondent was arrested on the casino floor. He was charged with three counts of false swearing. According to the respondent, he was acquitted following a jury trial. When he tried to get his job back at Caesar's, he was told that he would have to start out as a dealer. The respondent testified that he chose instead to work at the Buena Vista Country Club as a golf course starter. For several years, the respondent has been employed as a limousine driver and coordinator for Limo One, Inc., in Atlantic City.

New Jersey State Police Detective Sergeant James C. Leary testified at the hearing. He is assigned to the Special Investigations Unit of the Division of Gaming Enforcement Casino Enforcemeent Section. According to Detective Sergeant Leary, he conducted an investigation in 1985 concerning the issuance of complementaries at Caesar's. He explained that complementaries normally depend on the type of play - the patron's time at the game and the amount which is bet. When a patron buys in, a floor person records the patron's name and date of birth, the amount of wagers, and the time spent gambling. This information is recorded on a rating slip which is the basis for

information which the pit clerk will then put on the casino's computer. According to the witness, he began the investigation at Caesar's after receiving information that fictitious, inflated rating slips were being issued over a period of several months.

Another piece of information received by Detective Sergeant Leary was the name of a patron: Eileen Cohen. By checking Caesar's rating records, he found that Eileen Cohen had been receiving comps, beginning in June 1985. Detective Sergeant Leary acknowledged in his testimony that he had no way of verifying the accuracy of the ratings recorded for Eileen Cohen between June 13 and November 24, 1985. On the latter date, he placed Eileen Cohen under surveillence during her entire weekend stay at Caesar's. According to the witness, Eileen Cohen received a complementary hotel room for herself and her children. He observed her go on to the casino floor only once. However, she did not gamble. Detective Sergeant Leary kept Eileen Cohen under surveillence until 11:00 the next morning. He then checked Caesar's rating records. These records showed that Eileen Cohen had played at craps for 150 minutes beginning at 9:15 p.m. on November 24, 1985, and that she had made an average wager of $300. The witness stated that he knew the rating card was wrong because he had observed Eileen Cohen at dinner during the time the rating card indicated she had been gambling.

Detective Sergeant Leary's subsequent investigation revealed that Eileen Cohen had been rated every weekend from June 13 until December 30, 1985. During that time period she received comps almost every weekend. A total of 116 comps were received by Eileen Cohen and the value of these comps exceeded $19,000. The rating cards for Eileen Cohen showed a loss of $58,000 and a win of $10,500.

Detective Sergeant Leary acknowledged in his testimony that he could not determine if Eileen Cohen ever actually played at the craps tables. On the one night that he had observed her, she had not gambled. On December 30, 1985, he spoke with Ms. Cohen in her hotel room at Caesar's. The purpose of his visit was to learn from her how she was receiving comps. It is undisputed that Eileen Cohen told the Detective Sergeant the comps were arranged with the assistance of the respondent, who was then no longer a Caesar's employee. The parties are in dispute concerning the truth of Ms. Cohen's assertions. In any event, Detective Sergeant Leary testified that the respondent was one of the subjects of his investigation from its beginning.

Testimony and other evidence concerning the falsification of player ratings in Atlantic City was presented to the State Grand Jury. Relevant portions of the grand jury proceeding transcripts were admitted into evidence as Exhibits P-2, R-2 and R-3. The respondent and four others were thereafter indicted in State Grand Jury indictment number SGJ170-86-6, filed February 6, 1987. The respondent was charged with conspiracy, N.J.S.A. 2C:5-2; theft by deception in the 3rd degree, N.J.S.A. 2C:20-4; theft of services in the 3rd degree, N.J.S.A. 2C:20-8; misconduct of a corporate official, N.J.S.A. 2C:21-9; commercial bribery in the 3rd degree, N.J.S.A. 2C:21-10; and tampering with public information in the 3rd degree, N.J.S.A. 2C:28-7 (Exhibit R-1). This indictment was subsequently dismissed without prejudice.

The State Grand Jury conducted further proceedings. On or about October 5, 1987, State Grand Jury indictment number 189-87-8(2) was filed. The respondent and one other individual, Vincent Farina, were charged with conspiracy to commit theft in the 3rd degree, N.J.S.A. 2C:5-2; theft by unlawful taking in the 3rd degree, N.J.S.A. 2C:20-3; misconduct of a corporate official in the 3rd degree, N.J.S.A. 2C:21-9; commercial bribery in the 3rd degree, N.J.S.A. 2C:21-10; and theft by deception in the 3rd degree, N.J.S.A. 2C:20-4 (Exhibit P-1). The essence of the allegations against the respondent and Vincent Farina is that they acted together to unlawfully take control over food, beverages, and hotel rooms which were the property of Caesar's Boardwalk Regency Hotel Casino, and to obtain money from Eileen Cohen by creating and reinforcing the false impression that she was entitled to complementary services from Caesar's only by virtue of having paid the respondent and Vincent Farina for those services.

The respondent subsequently sought admission into the Pre-Trial Intervention Progam. After a preliminary rejection, respondent's counsel sought reconsideration (Exhibit R-4) and the respondent was admitted to the program. It is undisputed that the respondent satisfactorily completed the requirements of the Pre-Trial Intervention Program, and by order entered December 5, 1988, the foregoing indictment was dismissed.

Several witnesses testified on the respondent's behalf. Peter Eliakis, assistant shift manager for the Sands Casino Hotel, testified that he has known the respondent since 1976 and they play golf together twice a week. Mr. Eliakis is not knowledgeable about the respondent's background. However, has never heard anyone say anything derrogatory about the respondent and the respondent has always been honest

with him. Edward Sebloff is a former vice president of the Sands Casino. He has known the respondent for about seven years, and they also play golf together. Mr. Sebloff has never heard anything contrary concerning the respondent's honesty and veracity.

Sanford Kartzman is president of Limo One, Inc., and he testified that he first met the respondent in 1986. In the late spring of 1987, Mr. Kartzman hired the respondent to serve in a number of capacities. The respondent coordinated and supervised chauffeurs in the lobby of the Sands Casino Hotel. The respondent has also driven limousines and performed outside sales work for Limo One. According to Mr. Kartzman, the respondent has a reputation for honesty.

Joseph Giaimo also testified on the respondent's behalf. He is an assistant casino manager for the Taj Mahal in Atlantic City since August 1989. Mr. Giaimo was previously casino manager at the Sands for nine years. He first met the respondent several years ago and has become acquainted with him personally. According to Mr. Giaimo, the respondent has a reputation for honesty in the casino community.

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

The factual disputes in this matter concern the nature of the respondent's involvement with Eileen Cohen's receipt of complementary services from Caesar's Casino. Detective Sergeant Leary testified about his conversation with Eileen Cohen in her hotel room at Caesar's on December 30, 1985. He wanted to know how she was receiving complementary services. At first, Eileen Cohen told him that she had played craps and she deserved the comps.

Later in their conversation, Eileen Cohen changed her story. She told Detective Sergeant Leary that she had an arrangement whereby she would make payments in exchange for the comps. These payments were made to the respondent. Eileen Cohen also told the Detective Sergeant that she knew that her level of gambling did not entitle her to the amount of comps which she was receiving.

Eileen Cohen explained to Detective Sergeant Leary how her arrangement with the respondent began. While at a craps table, she had observed another patron

receiving comps. She was told that she should try to qualify for comps too, and she made inquiry of a casino employee. In her subsequent testimony before the State Grand Jury under a grant of immunity (Exhibit R-3), Eileen Cohen stated that the employee she spoke to was Vince Farina. He took her name and phone number and said that he knew of someone who could help her out. A week or two later, Ms. Cohen was contacted by the respondent, who told her that he understood that she was interrested in getting comped. The respondent confirmed her name, address, and date of birth. Ms. Cohen testified to the grand jury that she was subsequently called by the respondent and told that arrangements had been made for her to call the VIP office at Caesar's and tell them when she wanted to have reservations and she would receive room, food and board. She was told that this would not cost her anything.

Ms. Cohen then made her reservations through the VIP office, giving them her name and date of birth. She reserved a room for the weekend. In her hotel room on Sunday morning, Ms. Cohen received a telephone call from the respondent. She told the State Grand Jury (Exhibit R-3) that the respondent asked her to meet him outside and across the street from Caesar's. At 10:00 o'clock that morning, Ms. Cohen went across the street from Caesar's and met with the respondent in his parked car. He asked her if everything was satisfactory and she said that it was and she thanked him. The respondent then told her that an overnight stay, including room, meals and entertainment at Caesar's would cost her $200, and a full weekend would cost $300. This was the first that Ms. Cohen realized she would be required to pay for the complementary services which she was receiving. She told the State Grand Jury that she handed the respondent $200 in cash. She also testified that it was agreed that she would meet with the respondent every Sunday morning at the same place. She thereafter began going to Caesar's every weekend from June through December 1985.

Significantly, Ms. Cohen testified that on some of her weekend visits she would not play craps at all, but would then play craps the following weekend. There was no set schedule as to when she would or would not gamble (Exhibit R-3). Nevertheless, she received comps on almost every weekend as a result of her arrangement with the respondent. Ms. Cohen told Detective Sergeant Leary that she sometimes paid the respondent up to $500 for comps when she stayed at the casino longer than just over night. Everytime she received comps, she paid for them pursuant to her arrangement with the respondent.

Eileen Cohen was a cash player. She told Detective Sergeant Leary that she got her money from her business, which involved providing seat lift chairs for Medicare patients. She also told the Detective Sergeant that the respondent had come to see her in Pennsylvania to ask about employment in her business. She did not hire him. Ms. Cohen told the grand jury that her business was conducted by radio, television and newspaper advertising, and she did not need any personal sales people for door-to-door sales.

Ms. Cohen was questioned before the State Grand Jury as to why she would pay someone for complementary services when these are generally provided for free. She testified that she was not suspicious at first because she though "that's the way it was done." She later became suspicious but never said anything about it because she was receiving a benefit - since she was getting more than her money's worth, she did not question it (Exhibit R-3).

The respondent's testimony differed substantially from that of Detective Sergeant Leary and Eileen Cohen. He stated that he first became acquainted with Eileen Cohen when her business partners, Irv and Al Stolwicki, called him and said that she was not getting good ratings while playing craps. The respondent knew the Stolwicki brothers because they were regular players at Caesar's, and he said they were also bookmakers. He called VIP services at Caesar's and learned that Eileen Cohen had been comped for playing slots. According to the respondent, Eileen Cohen started calling him, seeking his help in getting rated for craps. This was at least a year after he had left his employment at Caesar's.

About two weeks after he first spoke with Eileen Cohen, she told him that the Stolwicki brothers wanted to talk to him about selling their chairs. The respondent testified that he arranged to meet with Eileen Cohen on the street near Caesar's. She gave him an envelope which contained details and brochures about the chair. The respondent stated that Eileen Cohen also gave him two $100 bills. When he asked what the money was for, she told him that it was his expenses for selling chairs. However, about two weeks later the Stolwicki brothers were charged with "defrauding old people," so the respondent never got into the chair selling business. It was the respondent's testimony that Eileen Cohen at no other time gave him any money.

A trier of fact may reject testimony because it is inherently incredible or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). In this matter, the testimony of Detective Sergeant Leary which set forth the information he learned from his interview with Eileen Cohen was straightforward and sincere, and entirely believable. Significantly, the information which Eileen Cohen provided to the Detective Sergeant was in all material respects the same information which she provided under oath in her testimony before the State Grand Jury. Ms. Cohen testified under a grant of immunity from prosecution. She would be in jeopardy from the testimony only if she did not tell the truth. Her testimony was neither inherently incredible, nor was it inconsistent with common experience.

The respondent's version of his interaction with Eileen Cohen was not inherently incredible. However, the respondent's testimony left me with the impression that he had concocted an explanation for his receipt of money from Eileen Cohen. Simply put, his testimony did not ring true. The evidence presented by the Division produced the stronger impression, had the greater weight, and was more convincing as to its truth. Consequently, I make the following additional **FINDINGS OF FACT:**

1. In or around May 1985, the respondent contacted Eileen Cohen and agreed to facilitate her receipt of comps from Caesar's.

2. Between June and December 1985, Eileen Cohen spent essentially every weekend at Caesar's. On some weekends while she was at Caesar's, Eileen Cohen gambled at craps, and on some weekends, she did not.

3. Eileen Cohen paid the repsondent directly for almost all of the comps which she received from Caesar's from June through December 1985. When the respondent was unavailable, Eileen Cohen made the payments to the respondent's designee.

4. In all instances, the value of the comps received by Eileen Cohen exceeded the amount of her payment to the respondent. The amounts paid by Eileen Cohen to the respondent totalled far in excess of $500.

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 licensee or registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. It is the intention of the Act to preclude the creation of any property right in any license permitted under the Act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege. Pursuant to sections 89d and 129 of the Act, the Casino Control Commission may revoke the key employee license of any licensee who is disqualified on the basis of the criteria contained in section 86 of the Act. Similarly, pursuant to sections 90e and 129 of the Act, the Commission may revoke the casino employee license of any licensee disqualified on the basis of the section 86 criteria.

Sections 86c(1) and g of the Act require disqualification for commission of certain enumerated offenses, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey. Among the enumerated offenses are theft and related offenses constituting crimes of the 2nd or 3rd degree, contrary to N.J.S.A. 2C:20-1 et seq. In this matter, it is undisputed that the respondent was indicted on or about October 5, 1987, on a number of counts, including theft by unlawful taking in the 3rd degree and theft by deception in the 3rd degree, contrary to N.J.S.A. 2C:20-3 and N.J.S.A. 2C:20-4. It is also undisputed that the respondent successfully completed a Pre-Trial Intervention Program and the indictment was dismissed on December 5, 1988.

Pursuant to N.J.S.A. 2C:20-3, a person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with purpose to deprive him thereof. Pursuant to N.J.S.A. 2C:20-4, a person is guilty of theft by deception if he purposely obtains property of another by creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Under N.J.S.A. 2C:20-2b(2), theft constitutes a crime of the 3rd degree if the amount involved exceeds $500 but is less then $75,000.

In this matter, the credible evidence in the record establishes that the respondent obtained money from Eileen Cohen by creating and reinforcing the false impression that she was entitled to complementary services from Caesar's Casino only by

virtue of having paid the respondent for those services. In addition, the credible evidence in the record establishes that the respondent, while no longer an employee of Caesar's, participated in a scheme whereby control was unlawfully exercised over the rooms, food and beverages of Caesar's with the intention to deprive Caesar's of that property. Based upon this conduct, I CONCLUDE that the respondent has committed the offenses of theft by unlawful taking and theft by deception, contrary to N.J.S.A. 2C:20-3 and 4. The amounts involved exceeded $500, but were less than $75,000. Thus, I further CONCLUDE that the respondent is subject to revocation of his casino key employee and casino employee licenses on the basis of his commission of these disqualifying 3rd degree theft offenses, pursuant to sections 86c(1) and 86g of the Act.

Section 90h of the Act provides that the respondent's casino employee license should not be revoked on the basis of his commission of offenses identified in the Act as disqualifiers, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. The Casino Control Act does not provide a similar opportunity to demonstrate rehabilitation in order to avoid revocation of a casino key employee license. Section 90h identifies eight factors to be evaluated in determining whether rehabilitation has been affirmatively demonstrated. The eight criteria concern: (1) the nature and duties of the position; (2) the nature and seriousness of the offense or conduct; (3) the circumstances surrounding it; (4) the date it occurred; (5) the age of the person responsible when the offense was committed; (6) whether the offense was an isolated or repeated one; (7) any social conditions which may have contributed to the offense or conduct; and (8) any evidence of rehabilitation.

I do not believe that a detailed analysis of the foregoing factors is appropriate in this case. The respondent did not attempt to establish rehabilitation. Instead, he denied having committed the disqualifying theft offenses in the first place. I did not believe his version of events and I have concluded that the respondent did commit the disqualifying offenses. In the face of the respondent's disbelieved denials, I must conclude that the respondent has failed to establish his rehabilitation by clear and convincing evidence, pursuant to sections 90h and 92b of the Act (which provides that gaming instructors shall be licensed under the standards established for qualification of casino employees).

Pursuant to section 80a of the Casino Control Act, it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. Pursuant to sections 89b(2), 90b and 92b of the Act, a casino key employee and a gaming instructor must demonstrate by clear and convincing evidence his good character, honesty and integrity. The respondent offered substantial evidence concerning his reputation in the community for these attributes. However, in light of the foregoing conclusions concerning the respondent's commission of disqualifying offenses and his failure to establish his rehabilitation because of his disbelieved testimony, I also conclude that the respondent has failed to establish his good character, honesty and integrity by clear and convincing evidence.

Based upon all of the foregoing, I **CONCLUDE** that the respondent's casino key employee and casino employee licenses should be **REVOKED.** It is thus not necessary to reach any further conclusions concerning whether the respondent has committed other offenses which would render his continued licensure inimical to the policy of the Casino Control Act and to casino operations, pursuant to sections 86c(2) and 86g of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino key employee and casino employee licenses of Richard B. Leose be **REVOKED.**

This recommended decision may be adopted, 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 27, 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 2 1990
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For the petitioner:

P-1	Superceding State Grand Jury indictment
P-2	Portion of grand jury testimony, dated September 21, 1987

For the respondent:

R-1	Original State Grand Jury indictment
R-2	Transcript of portion of grand jury proceedings, dated August 31, 1987
R-3	Transcript of grand jury proceedings, dated June 20, 1986
R-4	Letter from Kenneth F. Hense, Esq., to the Pre-Trial Intervention Program, dated January 26, 1988

WITNESSES

For the petitioner:

James C. Leary

For the respondent:

Peter Eliakis
Edward Sebloff
Sanford Kartzman
Joseph Glaimo
Richard D. Leose

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-242
REGISTRATION NO. 30397-40
OAL DOCKET NO. CCC 05150-89
ORDER NO. 90-12-4

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

Complainant,

ORDER

v.

ALLEN K. MCBRIDE,

Respondent.

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 21, 1990,

IT IS on this 11th day of April 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the respondent is found disqualified from holding a casino hotel employee registration substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit him to retain his casino hotel employee registration and he remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91; and

IT IS FURTHER ORDERED that Allen K. McBride is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

IT IS FURTHER ORDERED that the Commission's order of March 22, 1990, suspending the respondent's casino hotel employee registration is vacated.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5150-89
AGENCY DKT. NO. 89-242

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ALLEN K. McBRIDE,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Allen K. McBride, the respondent, pro se

Record Closed: January 25, 1990 Decided: February 2, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Allen K. McBride's casino hotel employee registration no. 30397-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had been convicted of a criminal offense which rendered continued registration to be inimical

to the policies of the Casino Control Act (Act), pursuant to Section 86c(2), and therefore, he is disqualified from registration, pursuant to section 91b.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so he could be employed in the casino industry . By complaint to the Commission, filed February 16, 1989, the Division objected to the respondent's continued registration, asserting that the respondent had committed the offense of possession of a controlled dangerous substance (cocaine), in violation of N.J.S.A. 2C:35-10a(1), which is a disqualifying offense under section 86c(2), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. Based upon the complaint, the Commission notified the respondent on February 22, 1989, that he had the right to a hearing, and that failure to respond within 15 days could result in his registration being revoked. By application dated March 30, 1989, which was received by the Commission on April 7, 1989, the respondent requested a hearing. Further, the respondent requested, pursuant to section 86d, that these proceedings be stayed until resolution of the then outstanding criminal charges. This request for deferral was granted. On July 11, 1989, the respondent notified the Commission that he had been convicted of the charge which forms the basis of this revocation proceeding, and the Commission directed that the matter proceed to a hearing. On July 12, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on July 17, 1989, 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 in the matter was held before Administrative Law Judge Edgar R. Holmes on October 30, 1989. The issue set forth at the prehearing conference to be resolved at the hearing was:

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he was convicted of a violation of N.J.S.A. 2C:35-10.

A hearing was held on January 25, 1990, in the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On November 22, 1988, the respondent was employed as a bus person at Caesar's Hotel and Casino. He was scheduled to work from 7 a.m. until 3 p.m. in the Ambrosia Restaurant. At approximately 8:15 a.m., a coworker, Timothy Brown, asked the respondent if he wanted to get high. On approximately three prior occasions at the casino the respondent had used cocaine with Mr. Brown which had been provided by Mr. Brown. The two employees went to the banquet store room which is located on the second floor near an employee smoking area. The store room was a suspected area of employee drug use, and detectives had placed a surveillance camera in the room. The respondent and Mr. Brown were observed entering the store room. Once inside the store room, Mr. Brown produced some rocks of cocaine. He placed the cocaine on a steel table and began cutting the cocaine. The respondent was observed placing some money on the table. At this time State Police detectives entered the store room. Mr. Brown swept the cocaine to the floor and grabbed the money. The two employees were then placed under arrest. [P-1]

On February 15, 1989, the respondent was indicted in the Superior Court of New Jersey, Law Division (Criminal) by the Atlantic County Grand Jury in indictment no. 89-02-0379-A-CP and was charged with one count of possession of a controlled dangerous substance (cocaine) in violation of N.J.S.A. 2C:35-10a(1) (P-2). On April 3, 1989, the respondent entered a plea of not guilty to the charge. On May 3, 1989, the respondent retracted his not guilty plea and entered a plea of guilty. The respondent was sentenced to serve 30 days in the Atlantic County Jail, was placed on probation for three years, was ordered to pay a $30 Violent Crimes Compensation Board penalty, a $1,000 drug enforcement and demand reduction penalty, and a $50 laboratory fee, and his driver's license was suspended for six months. On August 25, 1989, the respondent's custodial sentence was amended in order to permit him to serve his sentence on weekends (P-4). On September 1, 1989, an order of reconsideration of sentence was entered changing the respondent's sentence by suspending his jail sentence (P-3).

The respondent was born on April 29, 1958. He was 29 years old at the time of the offense, and he is presently 31 years old. He was raised in Atlantic City by his parents along with one sister and a retarded brother. His father died when the respondent was only nine. The respondent played football in high school and graduated form Atlantic City High. The respondent attended Rutgers University from 1976 through 1979.

In 1981, the respondent applied for and received a casino hotel employee registration. He then worked for three years at the Claridge Hotel and Casino as a valet parking attendant. He attended Johnson C. Smith College in Charlotte, North Carolina during the 1983-1984 school year, and he majored in health and physical education. He returned to Atlantic City, and in 1985 and 1986, he again was employed as a valet parking attendant at the Claridge. He was involved in a traffic accident in the parking garage while driving a patron's car, and even though the accident was caused by another employee, both employees were terminated. The respondent was then hired by the Trump Plaza Hotel and Casino as a valet parking attendant. He was laid-off in the fall after having a disagreement with his supervisor. In November 1987, the respondent was employed at the Forked River Nuclear Plant as a laborer for Local 415 of the Laborers Union. When the job was completed, the respondent became a valet parking attendant at the Showboat. After a brief period of time, the respondent left the Showboat to become a food line server at Resorts Hotel and Casino as a summer hire. At the end of the summer he was released, and he returned to the Showboat as a bus person. In August 1988, the respondent was laid-off from the Showboat for attendance violations, and he became a bus person at Caesars Hotel and Casino. He remained employed at Caesars until his casino hotel employee registration was suspended in March 1989. He was a good employee at Caesars and was being considered for a promotion to waiter at the time his registration was suspended. Caesars is holding the respondent's position open pending the outcome of these proceedings and will reemploy him should his registration be restored.

The respondent admitted that he would have used the cocaine with Mr. Brown if the detectives had not interrupted them. He then intended to return to work and bus tables of casino patrons who were in the restaurant for breakfast. The respondent does have one prior conviction for possession of marijuana. In 1979, while in college, the respondent was stopped for a license plate violation while driving a borrowed car. Several marijuana roaches were found in the back seat of

the car, and the respondent was found guilty in the Pleasantville Municipal Court of possession of marijuana.

The respondent's sister died in August 1989 of advanced decompensated cardiopulmonary disease (R-3). During the last year of her life, the respondent cared for and provided for his sister and her two children. The respondent's sister was totally disabled, confined to her bed and was under continuous oxygen therapy. Since her death, the respondent has been the sole support for and guardian of his 17-year-old nephew and his 13-year-old niece. As his mother died in 1985, he also has legal custody of his retarded brother. His brother resides in the Woodbine State School; however, the respondent visits him and must make decisions in his behalf.

The respondent has been active in his community as a day camp counselor at the West Side Complex in Atlantic City. The respondent would teach children athletic events such as basketball, swimming and weight lifting. He would do this three nights a week; however, he had to stop this last summer in order to care for his sister and her family.

The respondent is still on probation, and is making satisfactory progress. He has attended drug counselling since his conviction. He has not paid his drug enforcement and demand reduction penalty as he has had numerous bills since his sister's death. He maintains two houses, and has recently paid back taxes. He was recently laid-off from his employment at Major League Food Service due to a reduction in personnel.

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully. He candidly admitted his misconduct and described the underlying circumstances. The respondent has accepted responsibility for his misconduct and has expressed remorse. He believes his life has changed and that he must set a good example for his niece and nephew.

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Accordingly, I am persuaded to accept the respondent's testimony in substantial part.

FINDINGS OF FACT

1. On November 22, 1988, the respondent was employed as a bus person at Caesar's Hotel and Casino. At approximately 8:15 a.m., a co-worker, Timothy Brown, asked the respondent if he wanted to get high. The two employees went to the banquet store room which is located on the second floor near an employee smoking area. Once inside the store room, Mr. Brown produced some rocks of cocaine. He placed the cocaine on a steel table and began cutting the cocaine. The respondent was observed placing some money on the table. At this time State Police detectives entered the store room. The two employees were then placed under arrest.

2. The respondent admitted that he would have used the cocaine with Mr. Brown if the detectives had not interrupted them. He then intended to return to work and bus tables of casino patrons who were in the restaurant for breakfast.

3. On approximately three prior occasions at the casino the respondent had used cocaine with Mr. Brown which had been provided by Mr. Brown.

4. On February 15, 1989, the respondent was indicted in the Superior Court of New Jersey, Law Division (Criminal) by the Atlantic County Grand Jury in indictment no. 89-02-0379-A-CP and was charged with one count of possession of a controlled dangerous substance (cocaine) in violation of N.J.S.A. 2C:35-10a(1).

5. On May 3, 1989, the respondent retracted his not guilty plea and entered a plea of guilty. The respondent was sentenced to serve 30 days in the Atlantic County Jail, was placed on probation for three years, was ordered to pay a $30 Violent Crimes Compensation Board penalty, a $1,000 drug enforcement and demand reduction penalty, and a $50 laboratory fee, and his driver's license was suspended for six months. On September 1, 1989, an order or reconsideration of sentence was entered suspending the respondent's jail sentence.

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6. The respondent was born on April 28, 1958. He was 29 years old at the time of the offense, and he is presently 31 years old. He was raised in Atlantic City by his parents along with one sister and a retarded brother. The respondent played football in high school and graduated from Atlantic City High. The respondent attended Rutgers University from 1976 through 1979. He attended Johnson C. Smith College in Charlotte, North Carolina during the 1983-1984 school year, and he majored in health and physical education.

7. In 1981, the respondent applied for and received a casino hotel employee registration. He then worked for three years at the Claridge Hotel and Casino as a valet parking attendant. In 1985 and 1986, he again was employed as a valet parking attendant at the Claridge. He was involved in a traffic accident in the parking garage while driving a patron's car, and even though the accident was caused by another employee, both employees were terminated. The respondent was then hired by the Trump Plaza Hotel and Casino as a valet parking attendant. He was laid-off in the fall after having a disagreement with his supervisor.

8. In November 1987, the respondent was employed at the Forked River Nuclear Plant as a laborer for Local 415 of the Laborers Union. When the job was completed, the respondent became a valet parking attendant at the Showboat. After a brief period of time, the respondent left the Showboat to become a food line server at Resorts Hotel and Casino as a summer hire. At the end of the summer he was released, and he returned to the Showboat as a bus person. In August 1988, the respondent was laid off from the Showboat for attendance violations, and he became a bus person at Caesars Hotel and Casino.

9. He remained employed at Caesars until his casino hotel employee registration was suspended in March 1989. He was a good employee at Caesars and was being considered for a promotion to waiter at the time his registration was suspended. Caesars is holding the respondent's position open pending the outcome of these proceedings and will reemploy him should his registration be restored.

10. The respondent does have one prior conviction for possession of marijuana.

11. The respondent's sister died in August 1989 of advanced decompensated cardiopulmonary disease. During the last year of her life, the respondent cared for and provided for his sister and her two children. Since her death, the respondent has been the sole support for and guardian of his 17-year-old nephew and his 13-year-old niece.

12. As his mother died in 1985, the respondent also has legal custody of his retarded brother. His brother resides in the Woodbine State School; however, the respondent visits him and must make decisions in his behalf.

13. The respondent has been active in his community as a day camp counselor at the West Side Complex in Atlantic City. The respondent would teach children athletic events such as basketball, swimming and weight lifting. He would do this three nights a week; however, he had to stop this last summer in order to care for his sister and her family.

14. The respondent is still on probation, and is making satisfactory progress. He has attended drug counselling since his conviction.

APPLICABLE LAW

N.J.S.A. 5:12-86, **Casino License** - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> b. 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;

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

. . . .

(2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately proceeding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing;

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. 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 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, 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 or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

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

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

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

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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . .registrant." N.J.S.A. 5:12-129(1) provides for the revocation of 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 . . . registration." The Division contends that the respondent was convicted of a violation of N.J.S.A. 2C:35-10a(1), possession of a controlled dangerous substance (cocaine), which constitutes a violation of N.J.S.A. 5:12-86c(2), and that, accordingly, he is disqualified from continued registration.

(A) N.J.S.A. 5:12-86c(2)

Section 86c(2) 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 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 and of casino operations," 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 in the credibility and integrity of the regulatory process and of casino operations.' N.J.S.A. 5:12-1b(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.'

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that while the respondent was convicted of a violation of N.J.S.A. 2C:35-10, possession of a controlled dangerous substance, which is not listed as a disqualifier under section 86c, the respondent's conduct of possessing a controlled dangerous substance and preparing to use a controlled dangerous substance while on duty in a casino hotel constitutes a disqualifying offense under section 86c(2).

N.J.S.A. 2C:35-10, Possession, use or being under the influence, provides in pertinent part:

> a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L. 1970, c.226 (C. 24:21-1 et seq.). Any person who violates this section with respect to:
>
> (1) A controlled dangerous substance, or its analog, classified in Schedules I, II, III or IV other than those specifically covered in this section, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to $25,000.00 may be imposed.

The Division established, and the respondent admitted during his testimony, that he knowingly was about to use cocaine in a storage room while on duty at Caesars Hotel and Casino and that the respondent was convicted in Superior Court of possession of a controlled dangerous substance (cocaine) in violation of N.J.S.A. 2C:35-10a(1). Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:35-10. I further **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that the respondent was convicted in Superior Court of a violation of N.J.S.A. 2C:35-10. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-10a(1), the offense constitutes a crime of the third degree.

Recently, in State of New Jersey, Dept. of Law and Public Safety, Division of Gaming Enforcement v. Michael P. Waters, OAL DKT. CCC 3933-86, decided by the Commission (June 12, 1987), the Commission stated at 2-3 that:

> A distinction must be drawn between the rehabilitation from a section 86(c)(1) or (3) disqualifying offense pursuant to sections 90(h) or 91(d) of the Act and rehabilitation as an aspect of the inimical analysis. In the former situation, disqualification is established once it is shown that the respondent committed an enumerated offense. The respondent is then afforded the opportunity to affirmatively demonstrate his rehabilitation from that disqualification. It is well established that, consistent with other affirmative licensing criteria, the respondent must prove his rehabilitation by clear and convincing evidence. Application of Richard Romanishin for a Casino Employee License, Docket No. 84-EA-85 (Commission order, May 23, 1985); Application of Chester R. Brathwaite for a Casino Employee License, Docket No. A-4252-82T3 (Unpublished opinion reversing Commission decision, January 23, 1984).
>
> However, unlike a section 86(c)(1) or (3) situation, disqualification pursuant to section 86(c)(4) is not established upon demonstrating that the respondent committed the offense in question. Such a determination can only be made after considering all the circumstances surrounding the offense: its nature, its remoteness, and the offender's conduct subsequent to the offense, i.e., essentially the same factors which bear upon rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Commission decision, December 27, 1985); State v. Theodore Williams, Docket No. 84-288 (Commission order, May 1, 1987.)

The Commission concluded that if the Division establishes a case for the respondent's disqualification, it is "then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not he ultimate burden of proof), had shifted."

> In the Davis case, the Commission stated at 313-314:
>
> 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 rehabilitation 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.

The Commission indicated that "it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis (and) . . . the inimical analysis is substantially similar to the concept of rehabilitation." The Commission concluded that:

> The salient point to be made here is that we consider rehabilitation factors before concluding that the offense in question is or is not

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> 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). [Id. at 314] [footnote omitted]

The eight specific criteria enumerated in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d to be evaluated when a determination of rehabilitation is to be made are:

1. The nature and duties of the licensee's position or 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 licensee or 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 applicant or registrant under their supervision.

In regard to the first criterion, Allen K. McBride is a casino hotel employee registrant and was employed as a bus person. As such, he does not have direct responsibilities for actual gaming activities but does come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:35-10, possession of a controlled dangerous substance (cocaine) while employed in the casino industry. As this offense involves the possession and attempted use of a controlled dangerous substance by a casino hotel employee while on duty in the casino hotel facility, it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. A casino hotel employee possessed and attempted to use a controlled dangerous substance (cocaine) while on duty in a casino hotel facility. The use or possession of a

controlled dangerous substance by casino hotel employees on casino hotel property cannot be tolerated. It is a total anathema to the strict regulation of the casino industry.

Fourth, the respondent's misconduct occurred in November 1988, when it ceased. The respondent did; however, admit using cocaine with Mr. Brown on three previous occasions while on duty in the casino hotel facility.

Fifth, the respondent was 29 years old at the time of the first offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was not isolated in nature. He was convicted of possession of marijuana in 1979; however, there appear to be mitigating circumstances in that case. He was stopped for a motor vehicle registration violation while operating a borrowed car and some marijuana roaches were found in the back of the car.

Seventh, there are no social conditions which contributed to the commission of the offense.

Eighth, the respondent has attended college. He also cared for his dying sister and is now the sole support for his 17-year-old nephew and 13-year-old niece. He is also the legal guardian of his retarded brother. He has accepted his family responsibilities and has reformed his conduct. He is remorseful and has accepted responsibility for his misconduct. In the past, he has voluntered to help the youth in his community in athletic events. While still on probation, he has been making satisfactory progress. He has attended drug counselling, and his position is being held open by Caesars pending the outcome of these proceedings. He performed well at Caesars and was being considered for a promotion to waiter.

The Commission has addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated

> incident, and I think that there are two prior Commission cases[1] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent was a bus person. He had no responsibility for any casino gaming activity, but did have contact with casino patrons. Considering the nature of the position he held, the respondent's work record in the industry, his demeanor and candor at the hearing, the fact that he possessed and was about to use a controlled dangerous substance while on duty in a casino hotel facility, the seriousness of his offense, the repetitive nature of his offense, his involvement in the community, and his family status, when weighed against the eight rehabilitative criteria:

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(2).

(B) N.J.S.A. 5:12-91e

N.J.S.A. 5:12-91e permits the waiver of any disqualification criterion for a casino hotel employee consistent with the public policy of the Casino Control Act and upon a finding that the interest of justice so requires. At section 1b(6) of the Act, the Legislature declared the public policy to be in part that "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." As stated above in the discussion of the rehabilitation criterion as applied in Donna Davis, the respondent cared for his dying sister and is now the sole support for his 17-year-old nephew and 13-year-old niece. He is also the legal guardian of his retarded brother. He has accepted his family responsibilities and has reformed his conduct. He is remorseful and has accepted responsibility for his misconduct. In the past, he has volunteered to help the youth in his community in athletic events. While still on probation, he has been

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1 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. NO. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. NO. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

making satisfactory progress. He has attended drug counselling, and his position is being held open by Caesars pending the outcome of these proceedings. He performed well at Caesars and was being considered for a promotion to waiter. In addition, his casino hotel employee registration has been suspended for nearly one year. While normally any drug involvement in a casino hotel facility would warrant the immediate removal of the employee from the casino hotel industry, and recognizing that waiver is an exceptional remedy like a matter of clemency or grace which should be rarely applied except under exceptional circumstances where the interest of justice so requires, it appears that this is a case which warrants such exceptional relief. The respondent appears to have learned form his misconduct, has accepted responsibility for his actions, and has modified his conduct. He is the sole living family member to care for two minor children and his retarded brother. The position he holds does not involve gaming activity, and he has served nearly a one year suspension. The respondent needs his casino hotel employment in order to support his family in Atlantic City. Based upon these factors and the discussion of rehabilitation factors above, it is apparent that the public's confidence in the integrity of the legalized gaming industry would not justifiably be undermined by the continued registration of the petitioner. Based upon the facts in this matter, I **CONCLUDE** that the interest of justice requires the waiver of the criterion which would otherwise disqualify the petitioner from continuing to hold his casino hotel employee registration.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** pursuant to N.J.S.A. 5:12-86c(2); however, pursuant to N.J.S.A. 5:12-91e, the interests of justice require waiver of the disqualification, and, as such, it is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

February 2, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

2/5/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Feb. 7, 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 New Jersey State Police Investigation Report, dated December 1, 1988

P-2 Superior Court of New Jersey, Law Division (Criminal), Atlantic County, Indictment No. 89-02-0379-A-CP, dated February 15, 1989

P-3 Reconsideration of Sentence, dated September 1, 1989

P-4 Amendment of Sentence, dated August 25, 1989

For the Respondent:

R-1 Petition of coworkers

R-2 Letter of Victor A. Bressler, M.D., dated June 29, 1989

R-3 Death certificate of Elvenia Tatum

WITNESSES

For the Petitioner:

Allen K. McBride, the respondent

For the Respondent:

Allen K. McBride, the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-415
REGISTRATION NO. 086431-40
OAL DOCKET NO. CCC 4971-89
ORDER NO. 90-8-6

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

Complainant,

v.

RAYMOND A. MCDONALD, SR.,

Respondent.

ORDER

A hearing 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 February 21, 1990,

IT IS on this 21st day of March 1990, ORDERED that the initial decision is modified as follows:

> to reject the ALJ's comments on page 14 of the initial decision that an applicant for licensure must establish his or her qualifications for licensure. This matter involves a complaint for revocation of the respondent's casino hotel employee registration for which a registrant is not required to establish any affirmative qualification criteria.

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL DD

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4971-89
AGENCY DKT. NO. 89-415

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RAYMOND A. McDONALD, SR.,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Raymond A. McDonald, Sr., the respondent, pro se

Record Closed: December 18, 1989 Decided: January 5, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Raymond A. McDonald's casino hotel employee registration no. 86431-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1), that the respondent had failed to disclose material information pursuant to section 86b, and therefore, he is disqualified from registration, pursuant to section 91b. The respondent contended that he was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so he could be employed as a parking valet attendant at the Claridge Hotel and Casino. By complaint to the Commission, filed June 5, 1989, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of burglary in the third degree, in violation of N.J.S.A. 2C:18-2, and theft by unlawful taking in the third degree, in violation of N.J.S.A. 2C:20-3, the second of which is a disqualifying offense under section 86c(1). The Division also objected to the respondent's continued registration pursuant to section 86b, alleging that the respondent failed to disclose material information on his application for registration regarding a material fact pertaining to the qualification criteria. Based upon the complaint, the Commission notified the respondent on June 7, 1989, that he had the right to a hearing, and that failure to respond within 15 days could result in his registration being revoked. By application dated June 19, 1989, which was received by the Commission on June 22, 1989, the respondent requested a hearing. On July 3, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on July 18, 1989, 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 in the matter was held before Administrative Law Judge Lillard E. Law on August 8, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, to wit: N.J.S.A. 2C:20-3, theft by unlawful taking.

B. Whether the respondent, 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 material facts pertaining to the qualification criteria for his casino hotel registration within the meaning of section 86b.

C. Whether respondent may demonstrate rehabilitation pursuant to Section 91d of the Casino Control Act.

A hearing was held on December 1, 1989, in the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record remained open in order to afford the respondent an opportunity to submit additional documentary evidence in his behalf. Having not received any additional evidence from the respondent, the record closed on December 18, 1989.

FACTUAL DISCUSSION

On September 24, 1987, the respondent was hired as the assistant manager at Bassett's Original Turkey, Forrestal Village Mall, Plainsboro, New Jersey. On five occasions between November 6, 1987 and December 9, 1987, the respondent completed deposit slips for that day's cash receipts at the restaurant. The respondent was supposed to deposit those receipts in the bank; however, the respondent failed to do so, and he kept the receipts for his own use. The company's bookkeeper discovered three discrepancies on December 15, 1987, when she compared the company's books with the November statement she had received from the bank. Subsequent inquiry disclosed two other deposits which had not been made. None of the five deposit slips had been validated at the bank. The missing receipts totaled $3,685.40. [P-4]

On December 21, 1987, James Palmiter, manager of Bassett's Original Turkey parked the company car in the parking lot at the restaurant. In the car, under the front seat, were two locked deposit bags containing a total of $2,700.00. He went to the restaurant in order to get $200 to take to the bank in order to get change, and he then intended to go to the bank and make a deposit. A day shift employee did not report to work, so he was unable to make the bank deposit until early afternoon.

When he returned to the car he saw that the cash bags had been moved and that the keys to the car were in the vehicle. He found the locked cash bags, and proceeded to the bank. At the bank, he discovered that the cash bags were empty. Mr. Palmiter indicated that the respondent had been disciplined on December 14, 1987, and had not returned. He also indicated that only he and the respondent had keys to the company car, and that the respondent knew that Mr. Palmiter often kept cash bags under the seat of the car. [P-5]

On May 12, 1988, the respondent was indicted in the Superior Court of New Jersey, Middlesex County, Law Division (Criminal) in Indictment No. 839-5-88 and was charged with burglary, in violation of N.J.S.A. 2C:18-2, theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, and five counts of theft by failure to make required disposition, in violation of N.J.S.A. 2C:20-9 (P-2). On May 27, 1988, the respondent entered a plea of not guilty to the indictment. On August 9, 1988, the respondent retracted his plea of not guilty and entered a plea of guilty to the burglary and theft by unlawful taking counts of the indictment. On September 22, 1988, the respondent was sentenced in the Superior Court to probation for five

years, to make restitution in the amount of $6,432.03, to perform 100 hours of community service for each count, and to pay a $60.00 Violent Crimes Compensation Board penalty. [P-3]

The respondent is still on probation, and he is making restitution in the amount of $100 per month.

In late June 1988, the respondent attended a job fair at the Claridge Hotel and Casino. In July, he was hired by the Claridge as a parking valet attendant, and he completed a Personal History Disclosure Form 4A in order to obtain a casino hotel employee registration. This Personal History Disclosure Form was reviewed by Division Agent John Lugo. Agent Lugo noticed that the respondent had indicated in response to question number 9 that he had never been arrested or convicted, yet the respondent's criminal history record indicated that he had been arrested.

Agent Lugo contacted the respondent in April 1989. Agent Lugo read question 9 to the respondent, and the respondent indicated that he understood the question. At that time, and again at the hearing, the respondent indicated that he did not disclose his Middlesex County arrest on his Personal History Disclosure Form because he believed if he disclosed the arrest he would not get a casino hotel employee registration and he would not be able to keep the job at the Claridge.

The respondent, who is presently 25 years old, was raised by his mother in Philadelphia along with his younger sister. He graduated from high school and then entered the Marine Corps. He rose to the rank of corporal (E-4). He went Absent Without Leave (AWOL) in September 1987. He then obtained employment at Bassett's Original Turkey. Upon his arrest for the Middlesex County offense, the respondent was delivered to military authorities. The respondent was tried and convicted before a military court-martial of the AWOL offense, and part of his sentence included a Bad Conduct Discharge. The respondent was discharged from the military in February 1988 after approximately six years service.

The respondent is married and supports a two and one-half year old son and a one year old daughter. The respondent served as a little league coach as part of his community service.

The respondent did not list his employment at Bassett's Original Turkey in response to question 6 on his Personal History Disclosure Form, and he did not list his

military arrest or conviction in response to question 9 on his Personal History Disclosure Form.

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident, nor his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, I am somewhat skeptical of the respondent's testimony. There were several inconsistencies in the respondent's testimony, such as he first told me that he had not been arrested or convicted of any other crimes, yet when I inquired regarding the character of his military discharge, I discovered that he had been AWOL at the time of the Middlesex County offense, was wanted by and delivered to military authorities, and thereafter was convicted by a federal military criminal court. I also discovered that he did not list his employment at Bassett's Original Turkey or his military conviction on his Personal History Disclosure Form. As a result of these and other discrepancies, I am skeptical of the respondent's testimony.

FINDINGS OF FACT

1. On September 24, 1987, the respondent was hired as the assistant manager at Bassett's Original Turkey, Forrestal Village Mall, Plainsboro, New Jersey.

2. On five occasions between November 6, 1987 and December 9, 1987, the respondent completed deposit slips for that day's cash receipts at the restaurant. The respondent was supposed to deposit those receipts in the bank; however, the respondent failed to do so, and he kept the receipts for his own use. The missing receipts totaled $3,685.40.

3. On December 21, 1987, the respondent took $2,700 from the Bassett's Original Turkey company car which was parked in the parking lot at the restaurant.

4. On May 12, 1988, the respondent was indicted in the Superior Court of New Jersey, Middlesex County, Law Division (Criminal) in Indictment No. 839-5-88 and was charged with burglary, in violation of N.J.S.A. 2C:18-2, theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, and five counts of theft by failure to make required disposition, in violation of N.J.S.A. 2C:20-9.

5. On May 27, 1988, the respondent entered a plea of not guilty to the indictment. On August 9, 1988, the respondent retracted his plea of not guilty and entered a plea of guilty to the burglary and theft by unlawful taking counts of the indictment.

6. On September 22, 1988, the respondent was sentenced in the Superior Court to be placed on probation for five years, to make restitution in the amount of $6,432.03, to perform 100 hours of community service for each count, and to pay a $60.00 Violent Crimes Compensation Board penalty.

7. The respondent is still on probation, and he is making restitution in the amount of $100 per month.

8. In July 1988, the respondent was hired by the Claridge Hotel and Casino as a parking valet attendant, and he completed a Personal History Disclosure Form 4A in order to obtain a casino hotel employee registration.

9. In response to question number 9 the respondent indicated that he had never been arrested or convicted.

10. Agent John Lugo of the Division of Gaming Enforcement contacted the respondent in April 1989. Agent Lugo read question 9 to the respondent, and the respondent indicated that he understood the question. At that time, and again at the hearing, the respondent indicated that he did not disclose his Middlesex County arrest on his Personal History Disclosure Form because he believed if he disclosed the arrest he would not get a casino hotel employee registration and he would not be able to keep the job at the Claridge.

11. The respondent, who is presently 25 years old, was raised by his mother in Philadelphia along with his younger sister. He graduated from high school and then entered the Marine Corps.

12. He rose to the rank of corporal (E-4). He went Absent Without Leave (AWOL) in September 1987. He then obtained employment at Bassett's Original Turkey. Upon his arrest for the Middlesex County offense, the respondent was delivered to military authorities. The respondent was tried and convicted before a military court-martial of the AWOL offense, and part of his sentence included a Bad Conduct Discharge. The respondent was discharged from the military in February 1988 after approximately six years service.

13. The respondent is married and supports a two and one-half year old son and a one year old daughter. The respondent served as a little league coach as part of his community service.

14. The respondent did not list his employment at Bassett's Original Turkey in response to question 6 on his Personal History Disclosure Form, and he did not list his military arrest or conviction in response to question 9 on his Personal History Disclosure Form.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> b. 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;
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

1. Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . . .

N.J.S.A. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

. . . .

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. 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 of P.L.1977, c. 110 (C. 5:12-86).

. . . .

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, 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 or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

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

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

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

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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . .registrant." N.J.S.A. 5:12-129(1) provides for the revocation of 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 . . . registration." The Division contends, that the respondent was convicted of a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, which constitutes a violation of N.J.S.A. 5:12-86c(1), and second, that the respondent's nondisclosure of his arrests and convictions on his Personal History Disclosure Form 4A constitutes a violation of N.J.S.A. 5:12-86b, and that, accordingly, he is disqualified from continued registration.

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's theft of funds from his employer constitutes a violation of N.J.S.A. 2C:20-3, which, under the circumstances, and his subsequent conviction for this offense, disqualifies the respondent from continued registration.

N.J.S.A. 2C:20-3, Theft by unlawful taking, provides in pertinent part:

> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

The Division established, and the respondent admitted during his testimony, that he knowingly took money from his employer and that he had been convicted

for this offense. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-3 and that he has been convicted of a violation of N.J.S.A. 2C:20-3. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent and for which he was convicted is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-91d

A 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. 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 registrant's position;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the registrant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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.

In regard to the first criterion, Raymond A. McDonald, Sr. is a casino hotel registrant and is employed as a parking valet attendant. As such, he does not have

direct responsibilities for actual gaming activities but does come in contact with casino patrons and the property of casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, over a two-month period prior to being employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent, while employed as the assistant manager of a restaurant, failed to make five bank deposits of the restaurant's receipts, which it was his duty to deposit, keeping the receipts for his own personal use, and he stole additional receipts which were in the company car. The respondent abused his position of trust as assistant manager and supervisor in order to commit these offenses. As such, these offenses are very serious.

Fourth, the respondent's misconduct occurred in November and December 1987, when it ceased.

Fifth, the respondent was 23 years old at the time of the offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was not isolated in nature. He originally told me that he had not committed any other violations of the criminal laws, yet subsequently, I discovered that at the time of the offense he was AWOL from the military, his AWOL was terminated by apprehension, and that he has been convicted in a federal military criminal court of the AWOL offense.

Seventh, there are no social conditions which contributed to the offense. The respondent states that he committed the offense out of stupidity.

Eighth, the respondent is married and supports two young children. He served as a little league coach as part of his community service requirement. He has worked at the Claridge for one and one-half years as a parking valet attendant; however, the respondent presented no evidence of the quality of his work. He has not informed his employer of his prior misconduct. The respondent is still on probation, and is making restitution in the amount of $100 per month.

The Commission has recently addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

> I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases[1] in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent is a parking valet attendant. He has no responsibility for any casino gaming activity, but does have contact with casino patrons. Considering the nature of the position he holds, the lack of respondent's work record in the industry, his demeanor and candor at the hearing, the fact that he abused his position of trust, the fact that he stole the money from his employer, the serious nature of his offense, the repeated nature of his offense, his conviction and discharge from the military, his lack of involvement in the community, and his family status, when weighed against the eight rehabilitative criteria:

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

(C) 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 the Application of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning),

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1 I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. NO. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. NO. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at pages 15-16 of its Final Decision:

> So that fully informed decisions 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 Legislature 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. 5:12-7(b)(8); 80(a), (b) and (c); 89(b); 90(b) and 91(b). 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, Casino Control Commission, 78-EA-8 (Jan. 30, 1980) Final Order 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, Final Decision at 16; In the Matter of the Application of Steven M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), affirmed, Casino Control Commission (Jan. 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 16, 1980), modified, Casino Control Commission (Sept. 5, 1980). For a nondisclosure to result in a disqualification it must have been committed intentionally or in disregard of the regulatory process. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 253 (1979).

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 91 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.

In this case, the respondent failed to disclose his arrest in Middlesex County, failed to disclose his employment at Bassett's Original Turkey, and failed to disclose his federal military criminal conviction. He states that he simply did not think about his military conviction and that he tried to blot his employment at Bassett's out of his mind. Yet both of these events occurred only six months prior to his completing the Personal History Disclosure Form. The respondent's failure to disclose his Middlesex County arrest, however, is a different matter. He made a conscious decision not to disclose his arrest because he believed disclosure would adversely affect his application for registration. This was not an inadvertent or ignorant failure to make a disclosure but an intentional nondisclosure, which was made in disregard of the regulatory process.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent committed a violation of N.J.S.A. 5:12-86b, which disqualifies him from continued registration.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** and that registration no. 86431-40 be revoked.

This recommended decision may be adopted, 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 5, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 10 [redacted]
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Personal History Disclosure Form 4A, dated July 25, 1988

P-2 Superior Court of New Jersey, Middlesex County, Law Division (Criminal), Indictment No. 839-5-88, filed March 12, 1988

P-3 Superior Court of New Jersey, Middlesex County, Law Division (Criminal), Judgment of Conviction, dated September 22, 1988

P-4 Arrest Report, dated December 29, 1987, with attached Investigation Report, dated December 22, 1987

P-5 Investigation Report, dated December 21, 1987, with attached Arrest Report, dated January 5, 1988

For the Respondent:

None

WITNESSES

For the Petitioner:

Agent John Lugo, Division of Gaming Enforcement
Raymond A. McDonald, Sr., the respondent

For the Respondent:

Raymond A. McDonald, Sr., the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-116
LICENSE NO. 049630-21
REGISTRATION NO. 045077-40
OAL DOCKET NO. CCC 08585-87
ORDER NO. 90-17-17

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

Complainant,

v.

DAVID K. L. MAO,

Respondent.

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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of April 25, 1990,

IT IS on this 9th day of May 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that David K. L. Mao 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly BHA
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8586-87
AGENCY DKT. NO. 88-116

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
DAVID K.L. MAO,
Respondent.

Mitchell A. Schwefel, Deputy Attorney General, for petitioner (Peter N Perretti, Jr., Attorney General of New Jersey, attorney)

Brian J. Molloy, Esq., for respondent (Wilentz, Goldman & Spitzer, attorneys)

Record Closed: December 18, 1989 Decided: February 1, 1990

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

On October 27, 1987 the Division of Gaming Enforcement filed a complaint against David K.L. Mao and Tung Hop, Inc., t/a Jade Beach Chinese Restaurant charging that Mao, a casino hotel employee registrant and licensed junket representative, and Tung Hop, Inc., t/a Jade Beach Chinese Restaurant, holder of a non-gaming casino service industry license, had engaged in conduct which violated standards established for licensure pursuant to the Casino Control Act, *N.J.S.A.* 5:12-1 *et seq.* Specifically, the complaint alleged that Mao, vice president and manager of Tung Hop and a major stockholder therein, had between 1982

and 1987 "indicated to employees of Tropicana" that he had paid a bribe to an official ofthe Tropicana to secure a lease agreement for space for a restaurant in the Tropicana and further that in May and June 1987 Mao had engaged in conduct with one Jerome Palma in which he, Mao, had agreed to pay Palma $25,000 to obtain a lease to operate a Chinese restaurant at the Taj Mahal hotel casino presently being constructed by the Trump organization. In addition, the complaint asserted that Mao agreed to pay Palma a 10 percent "kick-back" on complimentary business sent to the proposed restaurant at the Taj Mahal, this business being directed to the restaurant by Palma or other representatives of the Taj Mahal in their dealings with "high rollers." The complaint further asserted that as a result of conversations between Mao and Palma, Mao had ultimately paid $1,000 to a Richard Levin in order to obtain the lease, under the assumption and belief that Levin was an associate of Palma's who could deliver the lease. In fact, Levin was actually Detective Sergeant Richard Gallo of the New Jersey State Police, acting in an undercover capacity. Palma, who had previously come under investigation by law enforcement authorities, was also acting at the behest of the Division and the State Police at the time of his conversations with Mao.

The complaint requested that the Commission take action against the licenses held by Mao and the corporation, pursuant to *N.J.S.A.* 5:12-129 and 130, and applicable regulations. It asserted that their conduct established that Mao did not have the requisite good character, honesty and integrity required for licensure as a casino employee, pursuant to *N.J.S.A.* 5:12-89(b)(2) and 90(b), which qualification standard also applies to sole owners and operaters of junket enterprises and also to junket representatives, who must be licensed as casino employees pursuant to *N.J.S.A.* 5:12-102(b). In addition, the complaint charged that the conduct engaged in by Mao was sufficient to constitute the offense listed in *N.J.S.A.* 2C:5-1, attempt to commit an offense, a disqualifier pursuant to *N.J.S.A.* 5:12-86(c)(1), and conspiracy to commit an offense, under *N.J.S.A.* 2C:5-2, also a listed disqualifying offense, and *N.J.S.A.* 2C:21-1 *et seq.*, fraudulent practices constituting crimes of the second and third degree, specifically *N.J.S.A.* 2C:21-9, misconduct by a corporate official, and *N.J.S.A.* 2C:21-10, commercial bribery, also automatic disqualifiers Finally, it was alleged that Mao's conduct would indicate that his licensure would be inimical to the policy of the Act and require disqualification pursuant to *N.J.S.A.* 5:12-86(c)(4), now c(2).

Count II of the complaint charged that Mao had failed to cooperate with the Division's request to appear and furnish information or otherwise cooperate in connection with its investigation, in violation of *N.J.S.A.* 5:12-80(d) and 86(b). This alleged conduct also disqualified Mao from licensure.

Mr. Mao requested a hearing on the charges. 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.*, on December 23, 1987. Thereafter, the Division filed an amended complaint on November 6, 1987 in which it named Peter D. Lu as an additional respondent and charged that Lu, president, director and stockholder of Tung Hop and holder of a casino hotel employee registration, was similarly lacking in the good character, honesty and integrity required for licensure because of his business association with Mao and purported awareness of Mao's allegedly criminal conduct.

On January 26, 1988, the State Grand Jury indicted Mao, charging him with conspiracy and commercial bribery. The alleged overt acts included Mao's conversations with Palma, the payment of the $1,000 to Detective Gallo purportedly for Gallo and Palma, and the promise to pay the remainder of the $25,000 bribe. Thereafter, on March 3, 1988, the Division filed a second amended complaint with the Commission, in which it alleged the indictment as an additional basis for disqualification under 86d of the Act.

A prehearing conference was held before Administrative Law Judge Stephen Thompson on March 24, 1988. Judge Thompson issued a prehearing order on March 28. Subsequently, the Division filed a motion to dismiss and withdraw its complaint as to Tung Hop and Peter Lu and to limit the complaint against Mao to the grounds arising from the statutory provisions in *N.J.S.A.* 5:12-86(d), in view of Mao's indictment. Judge Richard Murphy granted this motion.

Mr. Mao ultimately entered the pre-trial intervention program and the indictment was eventually dismissed. During the interim the case was placed on the inactive list by order of Judge Murphy on June 13, 1988, which was extended by his order of October 12, 1988. The case came on for a hearing before Administrative Law Judge Jeff S. Masin and was heard in the Office of Administrative Law in

Mercerville on November 20, 21, 27 and 28, 1989.[1] Following the hearing, respondent's counsel filed a letter brief on December 7, 1989 and counsel for the petitioner filed his brief on December 18, 1989. The record closed on December 18, 1989.

ISSUES

The prehearing order issued by Judge Thompson on March 28, 1988 established the issue as whether Mr. Mao had been indicted for a crime listed as a statutory disqualifier. Subsequent to that time, and following the disposal of the indictment thru pre-trial intervention and dismissal, the issues as they presently stand have returned to those raised in the initial complaint as to whether Mr. Mao possesses the requisite good character, honesty and integrity required by *N.J.S.A.* 5:12-102(b) 5:12-89(b)(2) and 90(b), for licensure as a junket representative and whether his actions, although unprosecuted, constituted conduct violative of some or all of the statutes noted in the complaint, requiring findings as to whether he is automatically disqualified from casino employee licensure and/or casino hotel employee registration card and/or whether his continued licensure would be inimical, *N.J.S.A* 5:12-86c(1), (2). In addition, the further issue is whether he failed to cooperate with the Division, in violation of *N.J.S.A.* 5:12-80(v) and 86(b). Finally, although not specifically addressed as such, rehabilitation must be considered, pursuant to 5:12 90h. and 91d., if automatic disqualification is otherwise established.

EVIDENCE

The primary evidence presented in this hearing consisted of the testimony of state's witnesses Mark P. Sivetz, a senior agent with the Division of Gaming Enforcement; Sergeant First Class William R. Kisby of the New Jersey State Police, Superintendent of the Casino Intelligence Unit, Sharon Altman-Eisenberg; Richard F Gallo, a detective sergeant first class with the State Police, and David K.L Mao himself. Testimony largely revolved around discussions and interpretations of statements made on tape recorded conversations between Mao, Jerome Palma, and

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[1]Hearings had begun before Judge Murphy on November 13, 1989. Judge Murphy recused himself upon learning of a possible conflict arising due to a witness in the case. The hearing was reassigned to Judge Masin.

Gallo. These tape recordings were offered in evidence along with transcripts of the recordings.

It appears that the investigation concerning Mr. Mao and the Jade Beach occurred as a result of information received from one John Lee, a former senior executive at the Tropicana Hotel in Atlantic City. In an October 9, 1987 interview with Lee, Senior Agent Mark P. Sivetz, Deputy Attorney General Mitchell Schwefel and State Police Officer Tom Alexander, Lee discussed conversations in which Mr Mao, who had a Chinese restaurant in the Tropicana, had purportedly said that he was looking for "more money" to sell the restaurant because it cost him more to obtain it since he had to pay some money for his lease, a reference which Lee understood to refer to under the table sums. There was no specific identification of the recipient of this "under the table" money. In his report of the Lee interview Sivetz includes a quote which reads "lot of expenses getting the restaurant opened." The word "kickback" is not indicated in quotes nor is the word "bribe." There is reference to $100,000 as a cost "to get the lease" (quote from report, not a direct quote from Lee). At the time Mr. Sivetz had no knowledge that there had existed a $100,000 escrow account for the Jade Beach restaurant with the Tropicana, a fact which he later learned of and which has been stipulated as having existed by the parties to this proceeding. This escrow was related to the duct work referred to in the report.

Following Sivetz's testimony, tapes and transcripts of the various conversations between Mao, Gallo and Palma were introduced through Detective William DiGiuseppe, of the Special Investigations Unit of the Casino Investigation Bureau. According to DiGiuseppe, he was brought into the investigation following the preparation and signing of a Consensual Order which had been prepared by Detective Kisby of the State Police. According to DiGiuseppe's understanding of what was occurring, the police had information that Mao had paid a bribe to obtain the lease for his restaurant at the Tropicana and would probably do so again with respect to his desire for a restaurant site at the Taj Mahal. Detective Kisby instructed Jerry Palma, who was a cooperating individual who had previously been a high ranking executive in the casino industry and had come under the scrutiny of the State Police, as to how to proceed with respect to setting up a meeting with Mao concerning a possible future restaurant at the Taj Mahal. The initial meeting occurred on May 29, 1987.

Sergeant First Class William R. Kisby of the New Jersey State Police assigned as supervising the casino intelligence unit which is charged with monitoring the infiltration of organized crime in the casino industry, testified that he first met with Jerome Palma in September 1986 regarding information concerning possible illegal activity in which Palma was supposedly involved. The investigation centered on kickbacks being paid for certain business obtained by American International Airways (AIA) while Palma was Director of Marketing at the Tropicana Hotel. On October 10, 1986, Kisby approached Palma regarding possible cooperation in investigations. Nothing positive occurred at the time and Kisby was unable to question Palma until sometime later, with counsel present. On April 10, 1987, the Division moved to suspend Palma's license. At that time, he denied under oath that he had paid any kickbacks. The license was suspended on April 15, 1987 and in late May 1987 Kisby was able to speak to Palma, who had previously spoken to a Captain Guzzardo, who was then the lieutenant in charge of the casino intelligence unit. By this time, Palma had agreed to cooperate with the State Police. During conversations held on May 22, 1987, Palma provided information concerning criminal activity which he had been a party to. He was promised that he would not be prosecuted criminally regarding the AIA payments. In the course of his discussions, Palma gave information concerning alleged kickbacks involving one Peter Chan, a former vice president of Oriental Marketing to the Tropicana and an operator of buses to the casinos out of Chinatown in New York. In the course of this discussions, Palma noted that Chan had told him that he, Chan, had heard that David Mao had paid a kickback to get his lease at the Tropicana. It was then arranged for Palma to contact David Mao by telephone and to have the conversation overheard by DiGiuseppe. Kisby instructed Palma regarding the contact, which was for the purpose of discussing Mao's alleged proposal for a restaurant in the Taj Mahal. The meeting was scheduled for May 29, 1987. From the standpoint of the State Police the purpose of the meeting was to see whether or not Mao would offer to pay a bribe for a restaurant concession at the Taj Mahal and, secondly, whether he would verify information concerning an allegation that he had paid $25,000 as a bribe for the lease for the Jade Beach Restaurant. to an attorney holding a high level position at the Tropicana.

According to Kisby he instructed Palma not to push Mao into a corner and to give him an "out" if he did not want to engage in bribery.

The tape and transcript of the May 29, 1987 meeting between Palma and Mao are in evidence as P-9a and b respectively. At page 3 of the transcript, Palma advises

Mao that he will shortly be moving over to a position at the Taj Mahal, which has recently been purchased by Donald Trump. Since Mao knew that Palma had previously had some difficultly with his casino license Palma mentions that he "should be back to work now because I got a pretty good guy within two weeks." He notes that he had spoken with both Donald and Ivanna Trump who are anxious for him to get moving. According to Palma, his position at the Taj will be that of executive vice-president in charge of the entire operation. On page 4, he anticipates that he will be working within "the next month" and says that he is already coordinating with people who are going to be transferred from other Trump operations to the Taj Mahal.

It is at this point that a discussion concerning a possible Chinese restaurant that the Taj Mahal begins. Palma asserts that there will be something like 20 restaurants in the Taj. Mao notes that he had written a letter to the previous owners of the Taj, indicating that he wished to have a restaurant in the facility. They had responded as to a possible location. Palma then asserts that most of the decision making with respect to the Trump operation at the Taj "will rest with me."

On page 7, Mao notes that in his conversations with the prior owners concerning the location at the Taj, they had shown him a blueprint for a spot with about 5,000 square feet on the second floor. However, according to Mao, there had been no conversation regarding details (page 8). It is at this point that Palma and Mao begin to discuss their "deal." Near the bottom of page 8, Palma states:

> I don't mean between the Taj Mahal. I mean as far as the lease or the rent goes between you and I.

At page 9, he begins:

> JP What kind of deal were we talking about between you and I?
> DM What ever you say.
>
> JP Well, that's what I gotta know. Where are you coming from? I mean what is it worth? You know what I'm saying? See, I have to know cause I have to know what, you know, where I'm coming from, who I'm placing and where I'm putting them in the location.
>
> DM Un huh.
>
> JP So you tell me, but feel comfortable. And if you feel uncomfortable, just forget it.
>
> DM No I, I wanna to see . . .

JP I've known you a long time.

DM Yea.

JP So I feel that I can talk to you.

DM Sure.

JP You know.

DM Yeah, I understand.

JP Because.

DM Whatever, no, I wanna. If there's a change, I wanna just roughly take a look because I remember ah, on the ground floor there is a casino, there baccarat, big baccarat pit . . .

Significant conversation then occurs at page 10.

JP Ah, after, you know after we conclude what we did, now and I tell you this off the record, I understand that when you came in here, ok, that you had an arrangement with (deleted)[2]

DM Yes.

JP (deleted).

DM Yeah, yeah.

JP Alright, that you paid him twenty-five thousand (25,000). Is it worth the same thing over there?

DM Whatever . . . whatever you say (notable).
JP Well, I think it's worth more over there.

DM Ah ah, we'll talk about it.

JP Well, I gotta do it cause I wanna tie it up right now, what I want to do is tie it up and get leases.

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[2]The transcripts delete the name of the person with whom Mao supposedly dealt. As the hearing developed, the person was revealed to be Steven Bolson, an attorney and high level employee of Tropicana. The parties advised the ALJ that Bolson has never been charged with respect to any such allegations and has been relicensed by the Commission subsequent to these allegations.

DM Alright.

JP I wanna take you over there.

DM Alright.

JP I wanna get you committed to the property.

DM Alright.

JP Alright, and David I've known you now for seven (7) years?

. . .

JP That's why I'm talking to you straight, cause I don't want to beat around the bush or anything. Now

DM I do understand. Jerry, you don't worry about me.

JP I know your a businessman, but, ok. Where what is it worth to you over there? See, I'm trying to find out comparative orders. Now I know what some other people told me. And the numbers their throwing out to me are ridiculously high and they're not reasonable. And what'll happen is, I'll, you know, I don't know the people. I would rather be more comfortable with somebody that I know that has done business before, and I trust (deleted) you know, cause he's, he's alright. Now, let me ask you a question. The difference -- two questions.

At page 12, Mao begins to talk about the comp situation. He complains that the Tropicana's personnel do not send people down to his restaurant, but rather send them to other restaurants in the facility which are owned by the Tropicana itself. Palma responds "we can work the comp situation out." Further on he notes that this will be "based on the amount of comps we send down to you."

On page 13, Palma states that if Mao has no objection he will have an attorney from Trump call Mao to work out the contracts. He states:

As far as the contracts are concerned, you'll talk to him about the terms and conditions, but I want it . . . you gotta get it done right away as soon as our deal is cut.

DM Yea, alright.

The conversation continues:

JP Now, let me ask you a question, what did you pay to get in here? What did this cost you?

DM Ten (10) percent across.

JP Is that what you pay to (deleted) Or is, what do you, what do you pay to get the restaurant here?

DM It's around twenty-five (25), twenty-five (25).

JP Um humm. You pay twenty-five (25) to (deleted) Alright. Is that worth twenty-five thousand (25,000) or more to you?

DM We can see, you know. (inaudible) whatever you say, you know, but, me and (deleted) just that's it.

JP Just you and (deleted).

DM No, I mean over here, just one, one time.

JP With you and (deleted) oh, there was nothing continuous?

DM Nothing continuous. No. Nothing at all.

JP Well, ok. See ours is a little bit different.

DM I, I know.

JP What, your deal, was that you pay (deleted) twenty-five thousand (25,000) in cash in advance and that's it -- it was over with.

DM Yeah, it's over with.

. . .

JP Ok. Our deal is gonna be a sum of money in advance . . .

DM Oh yeah.

JP And then a continuing thing.

DM Yeah, I know.

JP . . .with the comps.

DM Alright. If the comp situation's good, it's no problem. Alright? Cause here, you know why they (inaudible).

The conversation then proceeds to a further discussion of the arrangements.

JP You know, uh, that's why I felt more comfortable. I'll tell you what David, I would be this for the same amount.

DM Alright.

JP Alright, now for the same twenty-five thousand (25,000) dollars and then how do you work, how do you want to work the comps?

DM Jerry, I think the comps, with a person of your level, like a, uh, how much money depend (inaudible) what's the (inaudible) on the comp total (inaudible).

JP Ok. That's fine. Alright, let's do it this way.

JM (inaudible) ten (10) percent (inaudible) whatever.

JP Alright ten (10) percent of the comps? Alright, let's do it, let's do it in two (2) steps then. Let's get the contract executed, and then you and I, after you get in and you set up your business, we'll sit down and talk about the comps.

DM Ok.

JP Now, how does the money get transferred, you transfer it to me in cash?

DM No cash (inaudible). As soon as I get independent restaurant over there, its no problem.

JP Alright, then you'll pay me twenty-five thousand (25,000) in cash in an envelope?

DM Yeah.

JP Unmarked.

DM Sure, no problem.

JP What I don't understand is. Why couldn't (deleted) give you the comps on an ongoing basis?

DM No (deleted) really is our friends now. Every time he came here (inaudible).

JP But you paid him twenty-five thousand (25,000) dollars.

JM (inaudible)

JP And you paid him twenty-five thousand dollars.

DM And very, very he's very gentlemen, very nice.

JP Well I'm gonna be real nice, too for twenty-five thousand (25,000) dollars, David, you know what I'm saying?

DM Oh yeah, I understand.

Palma then expresses the concern that even though B. was involved "in what happened here I don't want him to know what we're . . . what we're" at which point

Mao replies "oh, yeah, sure, sure, I understand, sure." Palma states "just between you and I."

On page 18, Palma expresses some urgency in connection with getting the matter concluded, because "their starting to recommit to the people that they committed to before." He once again relates his significant status in the Trump organization at page 20 in a conversation with an employee of Mao's, when he again states that he is to be "vice president."

Following the meeting of May 29, a second meeting involving Palma and Mao occurred on June 11, 1987. On this date, Palma had arranged for Mao to meet with the State Police undercover agent Richard Gallo, who was posing as Richard Levin, purportedly an agent for real estate matters for the Trump organization. The significant portions of the transcript begin on page 3, where Mao asks Palma if he is now working for Trump and Palma replies "I still work for Donald." He also notes that contact with him will be easier at Trump Tower in New York. Palma introduces Levin into the conversation prior to meeting with him on page 4, when he refers to Levin and states that Mao will be in touch with him on a "consistent basis." He claims that "Richard does all of the real estate work for the Trump's. As far as the assignment of leases." Levin (Gallo) will show Mao the space and go over the plans and will need some information regarding Mao's corporate identity, etc. When Mao asks if Levin is an attorney, Palma replies:

> No. Real estate. And Richard Levin is a very dear and personal friend of mine. Alright? So when you talk to Richard, you can talk to Richard like your talking to me. Alright, because we're gonna finish this this afternoon.

The meeting with Levin was held in the Arcade Building in Atlantic City in the law offices of Nicholas Ribis, Esq., an attorney who represents Donald Trump. Ribis was not in his office on the day of the meeting, but he had loaned it to the State Police for their use. When Palma and Mao arrived at the office Palma opened the conversation by saying "Ok. Come on back Rich, how are you doing partner?" He introduced Mao. Levin quickly noted that "well, we're pressed for time. You know we're running as it is now." Palma again reasserts that Mao can talk to his "very good friend" Levin "like you're talking to me." The conversation between Palma and Levin (Gallo) then picks up on transcript P-12b.[3] The first portion of that

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[3]The transcripts use "G" for Gallo/Levin's comments. In order to be consistent with these, the decision will generally refer to Gallo as speaking, not Levin.

transcript is a repetition of the introduction previously referred to, but it then picks up at the bottom of page 1 with Levin representing that he is "on his (Trump) transition team, . . . we're handling all his commercial space." Gallo claims that "if it wasn't for Jerry I wouldn't even be here with you today. Okay, he must be a very good friend of yours."

After some discussion, Gallo asks Mao about his proposal for a restaurant and the discussions which Mao may have had with the original Trump owners concerning the lease. Mao explains to him that the lease is to be a ten year one with a five year option. The rent is discussed, with Gallo indicating it would be about $60,000 a month. On page 6, after some reference to Mr. Ribis and the use of his office, Gallo states:

> . . . He was kind enough to let me use his office, you know, while I'm in town here. All right. But what I wanna do is, I'm gonna have to know whether you wanna go with this deal or not. OK. If you wanna go with this deal, since I don't have time to waste. (Unintelligible). Jerry and I are looking for twenty five grand for ourselves.
>
> DM Yeah.
>
> G All right.
>
> DM Uh-Huh.
>
> G. Okay. I want five thousand hopefully by tomorrow. I mean, I wanna try and wrap this up by the end of the weekend.

Gallo suggests that the remaining $20,000 would be paid when the agreement is done. Mao replies that this is fair and then notes:

> That's OK cause I wanna make sure everything's OK, otherwise you just tell me I cannot get the lease here. (unintelligible).
>
> G Well, I'm gonna guarantee the lease.

Mao asks if he can talk to Ribis "tomorrow." He states that he wants "to formalize, because right now I know nothing at all now, all right." After some further discussion Gallo, again referring to the possibility of a contact with Ribis, says:

> All right. And you wanna try to set something with. See, Ribis don't know about the twenty-five thousand.

Mao replies:

> No, we don't talk about that.
>
> G OK, that's what I'm saying. That's why I wanna get that up front, then we do the agreement.
>
> DM OK.
>
> G And everything together. You know, if the agreement don't go your gonna get your five grand back. But I mean its gonna go. . . .

Gallo states that Ribis will be drawing up the lease. He then goes on to have a discussion with Mao, who is concerned about the comp situation and the problems he had with the Tropicana with respect to this issue. Gallo insists that Ribis can't talk to Mao about that and states:

> OK. That's something that's done on the side deal, OK. What your gonna do is we're gonna introduce you to, once we pick our casino host, all right, he's gonna be the guy the directs the comps to you. You're gonna wind up probably giving him ten percent or whatever, on that there. See that's gotta be a deal between you and him. In other words, Mr. Ribis cannot guarantee you comps. I mean, you know, that's not legal. To actually do that.
>
> DM No, no its not legal. I think its legal because you know why because if I have a space inside the casino, casino will send customers down to my restaurant to eat. (unintelligible) come to my restaurant (inaudible).
>
> G I know what your saying, yeah
>
> DM Gambler to my restaurant to eat. Because the casino comp all the restaurants go to eat.
>
> G But see that can't be in the contract.
>
> DM It is in my (unintelligible).
>
> G You have it in your contract, do you?
>
> DM Yeah, sure. It's legal.
>
> G You have it in your contract with Resorts?
>
> DM No, Tropicana.
>
> G With Tropicana, I'm sorry.
>
> DM Oh yeah, yeah. Well, I talk with Jerry before you know, I say you know, I wanna know even more detail on the comp situation, because if I'm inside the casino, and they

> don't give me comp to my restaurant to eat, I'm dead. It doesn't make sense for me to open a restaurant inside the casino.
>
> G I know what you mean.

On page 10, Gallo attempts to turn away from the comp discussion and states:

> And, I don't know why your getting hung up on that. The thing you know, is you know before we actually sit down and do the actual agreement, you know, our part of the deal is gotta be done. Because, you know, that's what I'm saying. That, you know, then you can sit down and do your agreement whatever you want. But I wanna know that your gonna go into their, our part of the deal is done, and then you know, and then will, go ahead with the agreements then then when the agreement is done then you come back to me with another twenty thousand.
>
> DM All right, I think, can I talk with (unintelligible) I wanna know a little bit more of the situation.
>
> G OK, Yeah.

Mao continues to assert his desire for more information and a meeting with Ribis about the comps and is again told that Ribis cannot deal with that issue. After further discussion of the lease arrangements, an agreement is made to meet at the Jade Beach at 12:00 the next day. On page 14, Mao again asks whether Levin is in the same law office as Ribis, to which Gallo replies "no, no, no. I'm part of the transition team. I work with facilities. My part is gonna be the leases." At page 17, Palma has returned to the room. The discussion between Gallo and Mao is continuing. Palma asserts that they can talk in front of Richard and states with respect to the comp situation:

> . . . We're gonna be sending people down on a continual basis from the pit bosses on up. All right? Then you and I will.

to which Mao replies that he wants more information.

As the testimony in the hearing established, at some point during Mao's association with the Tropicana and construction of the restaurant, it became necessary for ventilation ducts to be placed in the Tropicana. This was the reason for the creation of the $100,000 escrow account, of which approximately $23,000 was ultimately retained by the Tropicana. A discussion concerning ventilation and responsibilities for engineering occurs at page 18 of the transcript of the Palma-Gallo-Mao discussion on June 11, 1987. Mao says he wants to know what the kitchen situation and ventilation problems may be and Palma tells him that will be no

problem about it. "The responsibility as far as the ventilation and all is concerned is gonna be the engineering responsibility of the Trump's." He asserts that the lease figure includes the modification to the raw shell including the vent system and the electrical system which has "already (been) taken into consideration."

At pages 19 and 20, Palma and Gallo press for a decision by Mao as to whether he wants to enter into the commitment. Later in the discussion Mao indicates that because of the size of the investment involved, he wishes to speak to his partner before making any final decision as to whether to enter into any commitment. He will need some time to do this and asks for a few days. Gallo agrees and says he will stop at the restaurant at 4:00 p.m. on Sunday. Palma adds:

> The important thing to understand is this. Richard's doing this as a favor to me. Because of our relationship ok. If you don't want it, it's ok. (Inaudible)

Mao replies that he understands. Palma states "don't feel pressured." And Mao says no, no. I don't want . . . and then goes on to talk about the need to consult with his partners again.

On page 26, Palma again states that Levin/Gallo is not an attorney, but just someone who negotiates real estate.

The final significant conversation between Gallo and Mao occurs on June 14, 1987. At that time Gallo arrives at Mao's restaurant. Mao explains that he talked to his partner (which he later admitted was not true). As a result of the discussions with the partner and concerns raised about seeing more paperwork on the deal, Mao indicates that he can only give Gallo $1,000.00, instead of the $5,000 which Gallo had requested. In fact, as Mao testified at the hearing, the reason for the $1,000 payment verses the larger amount was his inability to obtain any funds over the weekend. Because he is only offering Gallo $1,000 instead of $5,000 he indicates that he and his partners will be willing to pay $30,000 in total, instead of the $25,000 requested. After some discussion, Gallo says this is unnecessary. The $1,000 is turned over to Gallo and an agreement is made to go see an engineer for the Trump organization at the Arcade Building on Wednesday.

On page 5, Gallo and Mao begin discussing Palma's situation. Gallo states:

> Yeah, How long have you known Jerry? You know him for quite a while?

EM I've known Jerry, yeah, quite a while, cause right now, you know, (unintelligible) toward Jerry because you know, has license problems. That what my partner wondered, you know, what he really doing.

G Yeah, yeah I know. He's got himself in a little bit of a

DM (unintelligible) something, I feel a hundred percent comfortable. Right now I, I hard for me to convince my partner too, you know, cause my partner . . . they are in the casino business too. They know what's the situation with Jerry. I don't know whether he solved the license problem or not.

G I think he's close to, doing okay with that there.

DM What is the situation? Is it OK

G Yeah, I think he's gonna be alright. I think that was really you know, a lot of bullshit on him.

. . .

DM (laughs) My partner think, you know, How can you deal with you, you know (unintelligible). I say, you know, he's not Richard Gillman, you know, I mean he's not Jerry, (unintelligible) Mr. Richard (Unintelligible).

. . .

DM My partner even tell me, you cannot deal with Jerry now. Not good for us cause we have a license at Tropicana now -- Casino Control license too. We don't (unintelligible) I say no, I'm not dealing with, he, Jerry Palma, I'm dealing with Richard Levin.

At page 7, some further discussion occurs:

DM Otherwise work here hundred percent because I know Jerry so many years.

G Yeah, well that's what I mean, you know, I feel comfortable here, because, you know, Jerry told me that you got this place here you know.

DM Yeah Yeah.

G This cost you too, right?

DM Right, yeah that's right?

G What was this here?

DM That's my partner's say, you know, we even, you know. I don't want you not to trust us because we're dealing because of my partner says, we, you know (unintelligible).

G So what was this here, same thing? twenty-five?

DM Yea.

G Yeah? more?

D.M. (unintelligible) Close.

G Yeah. Alright. OK then, why don't we just do that then and I'll see you, ah, let me call you, I'll tell you what, I'll stop here Wednesday.

Detective Sergeant First Class Richard Gallo testified concerning his involvement in the investigation, as reflected by the conversations on the tape recordings. In addition, he testified that on June 19 he picked up Mao and a Frank Hsu at the Jade Beach. He was wearing a recording device at the time, but it did not work. After picking up the gentleman and heading in the direction of the Arcade Building with the two men in the back of the car there was a discussion in which Mao mentioned that Hsu knew nothing regarding the $25,000. At that point, Hsu asked to get out of the car because his own restaurant was nearby. When the vehicle arrived at the Arcade Building, they were met by a number of state police and Division of Gaming Enforcement representatives, who took Mr. Mao inside and explained to him the investigation which was occurring. Mao was not arrested at the time.

In addition to the testimony related to the transcripts, the Division also presented Sharon Altman-Eisenberg, who is currently the manager of casino services at Merv Griffin's Resorts and was previously employed at the Tropicana for six and a half years, leaving in May of 1987. At the time she was a marketing executive and was familiar with both Mr. Mao and John Lee, who is vice president for Oriental marketing. On occasion she and Lee would eat in Mao's restaurant and he would sometimes join them. Sometime in 1986 a discussion ensued concerning Mao's interest in selling the Jade Beach. Eisenberg could not recall the details of the discussion and she was not sure whether anybody else was present during the conversation other than Mao and Lee. She was shown a memorandum concerning her meeting on October 1987 with Schwefel, Kisby and Sivetz. This report did not refresh her recollection concerning the conversation and she did not recall ever being at a meeting where the word "bribe" was used. She did acknowledge that she would have no reason to lie and would have given truthful answers to any questions asked of her at the October 9 interview. However, review of the bottom of page 2 and top of page 3 of the report did not refresh her recollection. The report was never entered into evidence.

On cross-examination, Ms. Altman-Eisenberg insisted that she had never been involved in a conversation where the word "bribe" or "kickback" had come up. She also had no recollection of Mao speaking of the costs involved in obtaining the Jade Beach. She does recall something regarding duct work which Mao had been required to provide. However, this recollection was based upon her review of the interview report.

On redirect, the witness acknowledged that she had once heard a rumor regarding money being paid to obtain the Jade Beach. She does not recall the initial "S." as being involved in this rumor nor does she recall "B" as the individual supposedly involved in receiving the bribe.

THE RESPONDENT'S EVIDENCE

David Mao is 50 years old. He was born in China and came to the United States at the end of 1966 to study at the University of Massachussets. Mr. Mao is a graduate of Taiwan Normal University. After his graduation he taught for one year and then was a travel agent in Taiwan. He became a United States citizen approximately 10 to 12 years ago. Eventually, he became the manager of a Chinese restaurant in Stratford and worked there for 12 years. He opened the Jade Beach Restaurant at the Tropicana at Christmas time 1982 and became a full-time employee there in May of 83. He presently lives in Cherry Hill and supports his 83 year old father. Mr. Mao is divorced and has children.

Mao became involved with the Jade Beach after his then wife told him that he could open a restaurant in the Tropicana. She knew Peter Lu's wife, who told her about the opportunity. Lu advised Mao that he had a lease for a restaurant at the Tropicana and asked Mao and his wife if they would be interested in joining him in the venture. They agreed. The Jade Beach lease, R-2 in evidence, was dated April 28, 1982 and is signed by Peter Lu as the representative of the restaurant. The lease was assigned on September 13, 1982 to Tung Hop, Inc., the corporation formed to own the restaurant. Mao was made vice president of Tung Hop, Inc. According to the respondent, he personally had no discussions with anyone at the Tropicana regarding obtaining a lease at that hotel.

Mao testified that there were problems concerning the duct work for the restaurant. Mao and Lu dealt with Steven Bolson, who was a high-ranking executive at the Tropicana and an attorney. Bolson requested that money be put up at the

start of the duct work installation, which involved a new exhaust system which had to rise ten stories to the roof of the building. As a result of the discussions with Bolson, Mao and Lu put up $100,000, which was turned over to Bolson and placed in an escrow account. Eventually, after the work was all done, the Tropicana kept approximately $25,000 from the escrow account for a gas line installation. Mao insisted that he paid no bribes or kickbacks to anyone at the Tropicana. He had no knowledge of any and had never seen anything indicative of such illegal payments He also denied that he ever had told anyone that he paid such bribes or was aware of them and denied ever paying bribes or kickbacks to anyone in his whole life.

Mr. Mao recalled a lunch with John Lee, where there was a discussion of the possible sale of the restaurant. He believes this occurred in 1983 or 84 when the Jade Beach was not doing very well. Lee had a Korean high roller who was interested in buying the facility. He does not recall Sharon Altman-Eisenberg being involved in the discussion, although they did eat in the restaurant all the time and it was possible that she was present. There were a number of discussions at which Mao offered Lee a selling price for the facility. He told Lee that it cost a lot to build the restaurant, but it was "impossible" that he ever said that he paid a bribe or a kickback and he never intended to imply that he paid any money under the table to anyone. The first he heard of such allegations was at his interview with the State Police.

Mao was familiar with Jerry Palma, who was the marketing director of the Tropicana and who is the person who approved comps which were given to gamblers. The Tropicana paid the restaurant for these comps. They constituted a significant part of the Jade Beach's business There were problems because the Tropicana, which owned all of the other restaurants in the facility, did not seem to want to send gamblers to the Jade Beach, which it did not own. Mao complained to Bolson regarding this problem and on July 22, 1986 Gordon Golum, Esq., an attorney representing the Jade Beach, wrote a letter to Bolson. Mao spoke to Bolson many times concerning the comp problem, but never offered to pay Palma or anyone else a bribe or kickback regarding the comps.

In May of 1987, Palma called Mao and asked to see him. Palma was then employed in a real estate office in Philadelphia, having left the Tropicana and worked for the Trump Castle for a while. Mao had had some preliminary discussions concerning a possible restaurant at the proposed Hilton Hotel, which later became the Trump Castle. He was told there was no space available. In his discussions

concerning this possible restaurant, there were no offers of any bribes or kickbacks made.

In discussing the transcripts and tape recordings, Mao testified as to his knowledge and familiarity with the English language. According to the witness, if he is familiar with the subject under discussion, his English is "okay." However, if the topic is unfamiliar, he sometimes has problems. All of his personal conversation with friends and associates of Chinese background are conducted in Chinese, as opposed to English. When Mao does no understand something in English, he is sometimes embarrassed to ask what the words mean.

Mao presented letters dated June 19, 1986, June 27, 1986, October 10, 1986, and March 18, 1987, in which he engaged in dialogue with representatives of Resorts concerning the possibility of a restaurant location in the proposed new Resorts Casino Hotel which was to be eventually known as the Taj Mahal. As of October 1986, H. Steven Norton, Executive Vice President of Resorts, was advising that there was "a possibility that we would like to have a Chinese Fast Food outlet at our Food Court but first we must determine whether the kitchen space available and other support services would permit us to share the Food Court with other operators." Norton said that he would have his senior vice president of Food and Beverage contact Mao. Mao interpreted this a good possibility that he would obtain a restaurant site. In March of 1987, he wrote Mr. Kohlross, expressing further interest in the restaurant. During these communications, Mao denied offering anyone any incentives or inducements to obtain the restaurant location.

Mao proceeded to discuss specifics of his discussions with Palma and Gallo as recorded on tape and transcribed in the exhibits in evidence. With respect to the May 29, 1987 discussion with Palma, Palma was the one who brought up the money payments. In the transcript, P-9b, referring to page 8 where Palma references Mao's having approached him about sitting down and "talk a deal." and Palma's expression that at the time he was not interested, Mao understood Palma to be talking about his attempt to investigate the possibility of a site at the Hilton/Trump Castle. There had been no offer of anything to Palma at the time as an inducement with respect to obtaining a restaurant at the Castle.

At page 10, where the discussion turns to Palma's comments "all right that you paid him $25,000 . . ." Mao denied paying anyone for the lease. Palma was the one who brought up the $25,000. Mao felt that Palma was talking about a real estate

fee. When Palma asked for a money payment, Mao believed that he was talking about a real estate commission or a finder's fee. When the discussion referenced contact with Harvey Freedman, (page 13) Mao thought they he was the lawyer who he would deal with in negotiating a lease. Discussions concerning 10 percent across also on page 13, as a response to Palma's comment, "Now, let me ask you a question, what did you pay to get in here? What did this cost you?", was a reference by Mao to the ten percent "gross" rent contained in the lease.[4] The ten percent comment in no way referred to, or implied, any kickback on comps and none was ever paid.

With respect to Mr. Bolson, Mao noted that Bolson came into his restaurant many times and that they had a business relationship and got along well. However he never paid him any bribe.

Mao testified as to the critical statements on page 15 and 16 regarding the agreement to pay the $25,000 in cash in an unmarked envelope. The term "unmarked" meant "cash" to him. It had no "special meaning." Because his restaurant was located in the casino, he dealt with a great deal of cash all the time

After the meeting of May 29, 1987, Palma attempted to contact Mao and Mao felt that Palma was pushing "too fast." When a meeting was set up with someone who turned out to be Levin/Gallo, Mao was under the impression that the meeting was going to be with a lawyer. He was confused at to whether Levin was a lawyer or a real estate agent, but then he understood that he was in real estate."

When Mao first met Levin, Levin emphasized that he had to move fast on a commitment. With respect to the comment at page 6 of P-12b where Levin/Gallo speaks of "Jerry and I are looking for twenty-five grand for ourselves," Mao understood this to be a real estate commission He wanted everything legalized and emphasized this many times during the discussion. There was to be no deal if it was

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[4]The lease with the Tropicana provides at page 8 in section 4.04 that in addition to minimum rent the tenant

> shall pay to the Landlord at the time and in the manner herein set forth as percentage rental for each calendar month throughout the term hereof a sum equal to ten (10) percent of tenant's gross sales made during the particular month in question, less the total of the minimum rent. . . .

not legal and he wanted to see things in writing. As for the "ten percent" discussions with respect to the comps, he noted at page 8 and 9 that the ten percent was in his view a legal payment because he was paying ten percent under his lease with the Tropicana, referring to both section 4.04 and also section 43.13. This provision provides:

> Landlord agrees to include Tenant's Chinese Restaurant as one of the restaurants to which Landlord may send patrons deserving of complimentary services ("comps") . . . It is agreed that, on a weekly basis, Tenant shall submit all comp slips with the applicable restaurant checks attached thereto to Landlord. Landlord shall, on a monthly basis, coinciding with Tenant's rental payments to Landlord, apply the amount Landlord owes to Tenant for the comps toward tenant's rental payments. It is agreed that only that amount of the restaurant checks specifically covered by the provisions of the comp slips, less ten percent discount to Landlord, shall be credited to tenant's account. If the amount Landlord owes to Tenant for the comps exceeds Tenant's monthly rental payment, Landlord shall within one days pay to Tenant the excess owed.

Mao asserted that when he was talking with Levin/Gallo about the comp situation, he was not sure that he and Levin were talking about the same thing. By the time the conversation had reached that portion at page 19 of the transcript, he felt "pushed," and he asked for more time (page 23).

After the meeting, he spoke with Steve Bolson, who had come down to his restaurant to pick up some food, and asked him if he knew who Levin was. He also told him that Jerry Palma was asking for "real estate money." Bolson told him not to pay money to Palma, but said nothing about paying Levin. Mao never mentioned the figure involved.

Mao has always had partners in his business operations. He would have had partners in any enterprise at the Taj Mahal. He had a few in mind, but had not spoken to them prior to his meetings with Levin. When he advised Levin on June 14, (P-13b) at page 2, that he had spoken to his partner, this was not true, because he could not locate any of the people that he had in mind. There was no "special reason" that he did not tell Levin this. He offered $30,000 as a payment (which he believed to be a real estate commission) because the restaurant which was being discussed was a large one and if he could get it it would be worth the $30,000. The reason for paying only $1,000, instead of the requested $5,000, was that that was all

of the cash that was available to him on Sunday. The $1,000 payment which was made was to secure the real estate lease.[5]

On June 19, Levin picked up Mao at the Jade Beach. Frank Hsu accompanied them. He was the vice president for Oriental Marketing at Resorts and also had a small Chinese Restaurant near the Sands Hotel. As they were driving toward the Arcade Building Hsu remembered that he had to get the key to open his own restaurant and he asked to get out. Mao denied that Hsu's exit had anything to do with any discussion of $25,000. After his confrontation with the police authorities at the Arcade Building, Detective Kisby drove him back to the Jade Beach. There was a conversation in which Kisby requested that Mao tape Bolson, but Mao indicated that he would not make any deal and would only speak to his own lawyer. He was asked to testify against Bolson and offered immunity, but denied that there was any truth to any allegations regarding Bolson.

On cross examination, Mao was asked about other real estate dealings which he might have been involved in and whether they involved real estate brokers and commissions. He had sold his house in Cherry Hill and a property on Texas Avenue, which he had owned with his partner in the Jade Beach as a residence for restaurant workers. He did not think that a real estate broker was involved when this was sold

Mao was questioned as to his understanding of Jerry Palma's status with respect to the casino industry at the time of their May 29 meeting. According to Mao, he knew that Palma was suspended and not working in the industry, and thought that he was working for himself as a real estate person. He denied that he saw anything unusual about the request made by Levin on June 11 that he not talk about the $25,000 payment to Ribis. (P-12B, page 7)

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[5]When he received no receipt for this money, he called Palma after the 14th at Palma's home and received a number for him in Philadelphia. He called him and a quick conversation ensued, with Palma indicating that he was very busy.

Mao explained that the $1,000 paid to Gallo came from his own pocket According to him, in the Chinese community people generally carry cash, not checks. His restaurant business always deals in cash, a plentiful commodity in the casino setting.

Mao presented several character witnesses.[6] Peter Ho has known Mao for 30 years. They first met during their first year in college in Taiwan and were roommates. Ho left Taiwan in 1964 and attended Lincoln University, obtaining a BS in mathematics and than a Masters in mathematics at Lehigh and a Masters in computer sciences at the University of Pennsylvania. His doctorate is pending the completion of a thesis. Mr. Ho is employed by a defense contractor and has a secret security clearance.

Mr. Ho has a "social relationship" with Mao, who he sees approximately once a month or so. He describes them as "close friends" and is of the opinion that Mao is a "very honest person." In part because of the "nature of (his) job," Ho would never deal with anyone who he did not believe to be honest.

The witness described Mao as "sometimes a little naive." He doesn't really "know a whole lot of mundane details in life" and is very easy about giving his trust to people." In addition, he often uses incorrect words in English and has tremendous difficulty with certain English conversation. Ho and Mao always speak Chinese with each other.

Dr. John Fei testified that he has known Mr. Mao since 1982. Dr. Fei was born in Peking, China and came to the United States in 1946 as a graduate student at the University of Washington. He obtained his Ph.d in economics at MIT in 1952 and has taught at Harvard University, Antioch College, Cornell University and is now a full professor of economics at Yale, where he has served for the past 20 years. He met Mao through Peter Lu. At the time, Lu was thinking of starting a restaurant in Atlantic City. Dr. Fei is a shareholder in the Jade Beach Restaurant. He has become friendly with Mao over the years and sees him about five to six times a year. He has a "definite opinion" that Mao is "completely trustworthy" and fair to the absentee owners. He is "honest" "and a "timid personality." Having reviewed the transcripts of the conversations which were placed in evidence in this case, Dr. Fei saw nothing which changed his opinion of Mr. Mao. He believes that Mao was "trapped."Although he has heard Mao speak English, Fei always engages in conversations with Mao in Chinese.

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[6]In addition to live testimony, he also offered R-9, a certification by Kenneth T.C. Hu.

Peter Lu, the president of Tung Hop, Inc. testified that he initiated the lease arrangements for the Jade Beach at the Tropicana, negotiating with Steve Bolson and Lee Gottlieb. Lu signed the lease personally and Mr. Mao was not involved until later on. The lease was later assigned to Tung Hop, Inc. Lu testified concerning the ten percent of gross and comps payments which the lease required. He negotiated these provisions. He never paid anyone at the Tropicana any illegal payments and knows of no such payments which were made. Twenty-five thousand dollars was taken from an escrow account for some construction work.

Mr. Lu was interviewed by a Mr Clements of Tropicana Security regarding an alleged payoff made to a high level executive at the Tropicana. He did mention this allegation to Mr. Mao. Lu denied any knowledge of anything with respect to the deal being negotiated for the Taj Mahal site and was not a partner in any such arrangements.

DISCUSSION AND ANALYSIS

I **FIND** that there is no dispute with respect to the fact that in connection with an attempt to obtain a restaurant site at the Taj Mahal, David Mao was prepared, and indeed agreed to pay, the sum of $25,000. It is further uncontested that he in fact handed over $1,000 in cash to Detective Gallo, posing as Richard Levin. Mao does not dispute that he understood both the $1,000 and the $25,000 payments as monies which were going to Levin and Palma.

The uncertain aspect of this case arises from the need to decide what exactly the actions, statements and agreements of Mao meant. Did he actually believe that he was paying legitimate real estate commissions, finders fees, or some such other lawful payments to individuals whom he legitimately believed were acting in a good faith manner on behalf of the Trump organization and who were authorized to receive such monies or was Mr. Mao instead a cunning, sharp businessman who, because he believed that acquisition of a restaurant at the Taj Mahal was a good business deal, was willing and in fact agreed to pay monies which he knew to be illegal to individuals who he knew would be receiving the monies for themselves, without any lawful authorization to do so, as a means of securing their aid and influence in tying up a lease with Trump. Was Mr. Mao the somewhat naive, innocent, occasionally befuddled person whose command of English occasionally was insufficient for the types of conversations in which he engaged as a businessman, or was he instead a wheeler-dealer, a person who knew full well that sometimes, in order to obtain what one wants in the business world, one must be

willing to grease the palms of those who are in a position to secure what one wants, even if such payments are completely unlawful? If Mao actually believed that he was making lawful payments to legitimate recipients, then all of the allegations of conspiracy, criminal attempt, etc. fail.

In analyzing the above questions, the evidence presents certain aids. The tape recordings and transcripts allow an analysis of the flow of conversation from which one can attempt to detect nuances of meaning and/or indications of confusion. At the same time, the evidence is bereft of whatever assistance might be derived from the testimony of Jerry Palma. Nevertheless, this absence is not crucial in the analysis of the actual words spoken by him, Mao and Levin/Gallo during the course of their encounters, and certain background information against which these conversations can be measured.

Initially, there is not doubt as to how the sequence of events before us was initiated. There is no indication from the evidence that David Mao on his own attempted to approach Jerry Palma or anyone else from the Trump organization for the purpose of suggesting to them that he was so anxious to obtain a restaurant in the Taj Mahal, that he was willing to pay bribes, or offer kickbacks, so as to get the facility. Palma contacted Mao. He raised the question of Mao's interest in a restaurant, which in and of itself was not at all surprising in view of Mao's earlier contacts with the prior developers. Further Palma was the one who brought up the conversation concerning the $25,000 and the money which it cost Mao to get the Jade Beach.

The first, and perhaps most significant question, may be whether David Mao did in fact pay some illicit sum to anyone at the Tropicana to obtain the Jade Beach Restaurant, or whether, as he says, his conversations with Palma concerning monies paid and transactions entered for consideration, into with Mr. Bolson were in fact nothing more than conversations concerning the escrow account, and the approximately $25,000 which was retained by the Tropicana. If Mao indeed paid a bribe, then certainly there is good reason to believe he would have been willing to do so to obtain the Taj Mahal site. If on the other hand, as he asserts, he never did such a thing, and was not talking about such in his conversations with Palma and later with Levin/Gallo, and if in fact all of his conversations about payments for the Jade Beach were concerning completely lawful escrow monies, then there is much less reason to believe that Mao was the guilty character whom the Division paints him to be.

The testimony of Mao is explicit, direct and unequivocal as to his absolute denial of any payoffs to Steven Bolson or anyone else at the Tropicana. Indeed, Peter Lu's testimony indicates, and the lease seems to bear out, that it was he who negotiated with the Tropicana for the lease and that Mao was not even involved with the operation at the time that the lease was negotiated. The Division has offered no significant independent evidence that Mao was involved with initial site acquisition and lease arrangements at the Tropicana. If the suggestion is that monies were paid under the table prior to an agreement being reach between Tropicana and Lu and/or Mao, there is no affirmative evidence to support this, other than the alleged assertions of Mao and the hearsay with respect to what he purportedly said. As for this hearsay, John Lee's comments concerning what someone supposedly said and what he supposedly heard are at least double hearsay. Sharon Altman Eisenberg could recall little, if anything, about her conversations with Mao concerning the cost of the restaurant, but she vehemently denied that she ever heard any comments about bribes or kickbacks. The report concerning her purported statements during her interview, statements which she had little recollection of, was not entered in evidence. Mr. Bolson was not called to testify by either party.

Although there is no evidence that Mao was involved in negotiating the Jade Beach site acquisition or lease with the Tropicana, there is evidence that he was involved directly in discussions with Bolson concerning the duct work and the escrow account. Thus, his references to paying Bolson might well refer to these discussions and the ultimate retention by Tropicana of the approximately $25,000 from the escrow account. It seems clear that Mao and Bolson had a friendly relationship and that Mao viewed Bolson as the significant figure with whom he dealt at the Tropicana. His statements to Palma with respect to payments to Bolson may well reflect this friendship, this business relationship, and be devoid of any nefarious connotation.

There can be no question but that the $23,000 to $25,000 retained by Tropicana from the escrow account was a cost, an expense, which the Jade Beach owners incurred in establishing their restaurant. If one queried the owners as to how much the facility cost them and what expenses were involved in obtaining the restaurant, this expense certainly would be one, and one which might well stand out, in that it was not part of the cost of leasing the site, but was a separate, independent, extraordinary expense. Thus, comments concerning what it cost to get into the Tropicana might well elicit a response concerning this sum of money and

when one couples this with the fact that Bolson was the Tropicana representative concerned with these arrangements, some loose, imprecise or relaxed form of conversation might well be construed as meaning that money was paid to Bolson for the facility.

Despite the above, there are additional considerations which argue against Mao's position as to his frame of reference with respect to the $25,000. Clearly, the costs involved in "getting" the Jade Beach, if they are associated with the escrow cost, also might include the cost of the chimney work itself, which Mao refers to as being $150,000, or, according to Lee's recollection, $300,000 (Sivetz report, P-4). To focus only on the $25,000 which was retained as escrow and ignore the other construction-related costs seems to reflect a narrow viewpoint of the "costs" involved. This might suggest that Mao was in fact aware that the $25,000 was not the escrow money, but was some other sort of payment which he made and which was more akin to the sort of payment which the state contends was arranging with Palma.

In addition, although Mao's testimony as to his knowledge of real estate commissions was not particularly revealing, one cannot be sure whether Mao had any understanding of which party to a lease arrangement might pay a real estate commission or finder's fee and whether such a commission would be paid to someone who was an employee or direct agent of the Trump organization, as Levin claimed to be, or whether Palma, who was asserting that he was about to become a vice president of the Trump organization, would receive an independent real estate commission separate and apart from the salary and other remuneration which he would receive as an employee of Trump. The record leaves one to speculate on these questions, which are certainly relevant considerations in deciding whether Mao could have legitimately thought that the requested $25,000 was a real estate commission.

In summary, the evidence concerning Mao's understanding of the monies requested from him by Palma and Levin is open to much debate. It is neither clearly established that he did in fact agree to pay a bribe nor is it clearly established that he was speaking solely of an innocent real estate commission. There are reasons to favor both opinions. The lack of any independent evidence of the payment of a prior bribe, the possibility that Mao did not really understand all of the business considerations or the relationships of the persons with whom he was dealing either with each other and/or the Trump organization, the possibility that his discussion of

$25,000 and Bolson was related to the actuality of a relationship in which $25,000 became a significant point of discussion with Bolson in the escrow situation, and the possibility of linguistic confusion, all lead to a conclusion of innocence. On the other hand, the concern for the suspicious phrasing, for the seeming lack of connection between an escrow payment and the type of payment which Palma spoke of, the possibility that Mao really understood that employees and representatives of Trump would not be entitled to a real estate commission, and the difficulty in accepting Mao's contention that "unmarked" meant "cash" to him, without any illicit connotation, all weigh in favor of guilt. Added to these considerations must be the strong character testimony presented by distinguished gentlemen whose backgrounds and achievements speak strongly in favor of their belief in Mao's honesty and integrity, but who have strong friendships with him, and in one case a business relationship, which might sway their thinking, even if subconsciously.

Based on the above considerations and a consideration of Mr. Mao's demeanor, both at the hearing and as expressed in the tapes, I **CONCLUDE** that the Division has established by a bare preponderance of the credible evidence that David Mao did in fact agree to and did in fact pay to Palma and Gallo a sum of money which he knew to be illegal for the purpose for securing a favorable restaurant location at the Taj Mahal.[7] I emphasize that this determination, which is an extremely difficult one, is by no means based upon evidence which clearly establishes Mr. Mao's guilt. However, in this civil/administrative proceeding, the burden of proof which the Act places upon the Division to establish Mao's conduct as illegal and violative of statutory prohibitions is a mere preponderance of the credible evidence and not the higher civil standard of clear and convincing evidence, let alone the criminal standard of beyond a reasonable doubt. Although it is

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[7]In drawing the above conclusion, I am swayed by the factors stated above which argue against Mao's version of the situation. Among other concerns, I am unimpressed by his suggestion that he believed that the references to the "unmarked" nature of the payment was a neutral or innocent remark. Although Mr. Mao is not a native born American, and while there is no doubt some lack of fluency in English, his testimony and his statements on the transcripts do not depict to me any great difficulty in conversation, nor do I believe that the evidence of such difficulties convinces me that he would not have known from the nature and tenor of the conversation and the words spoken that there was something about Palma and Gallo's conversations which, coupled with remarks such about cash payments, in an envelope, unmarked, etc., and his expressed uncertainty as to the propriety of even dealing with Palma did not suggest some possible illegality.

irrelevant to this hearing, I could not **FIND** Mao's guilt by either of the higher standards. However, in this proceeding the proof is sufficient.

In making the above finding, it is also necessary to add that the evidence as to whether or not Mao did make an illegal payment to anyone at the Tropicana in connection with Jade Beach is even less persuasive. On this issue, I **FIND** that the Division has failed to establish that Mao did engage in such conduct. However, this finding does not specifically relate to the allegations in the complaint that Mao acted improperly with respect to Palma and Gallo. Although a finding that he did make illegal payments for the Jade Beach would be highly suggestive as to the nature and intent of the conversations with the two agents, the guilt or innocence with respect to the Palma/Levin incidents stands separate and independent from any conclusions on the Jade Beach/Tropicana.

With respect to the conversations concerning comps, the evidence also fails to establish by a preponderance that Mao's conversations were intended to be discussions concerning illicit arrangements. It is quite clear from the discussions held between Mao and Levin/Gallo that when the agent pressed the issue of a comps arrangement and referred to the need for the arrangement to be made independent of the lease with Taj Mahal and to be made on the side, that Mao responded that such an arrangement involving a ten percent pay back or credit was not only legal, but was in fact incorporated into his lease with the Tropicana. Examination of the lease bears this out. Thus, while Palma and Levin were talking about something which they perceived as being an illegal kickback arrangement, Mao was under the impression that it was perfectly legitimate for a percentage of the comps expense to be paid back or taken back or credited to the casino. While there is some conversation by Levin about paying back money to the casino host, the conversation immediately moves to the discussion of the contract with Tropicana and Mao's belief in the legality of a ten percent payment. This conversation is extremely revealing and sufficient in my view to establish that David Mao did not believe that he was talking about making an illegal arrangement concerning comps with Palma and/or Levin. Thus, the Division's proofs fail to establish that this portion of the conversation was, from Mao's perspective, about illegal activity.

Good Character, Honesty and Integrity

In view of the above finding as to Mao's guilty conduct with respect to the Taj Mahal affair, I **CONCLUDE** that he has failed to establish by clear and convincing that

he has the requisite good character, honesty and integrity for licensure as a junket representative, as required by *N.J.S.A.* 5:12-102(b), 89b2 and 90b. It hardly need be stressed that his conduct reveals a serious character flaw negating any such positive finding.[8]

Disqualification and Inimicality
Commercial Bribery

In addition to the determination concerning good character, honesty and integrity, Mao's conduct would, if prosecuted, have been sufficient to establish his commission of several offenses listed in subsection 86c of the Act, including *N.J.S.A.* 2C:21-10, commercial bribery. That statute provides that it is crime for an individual to

> solicit(s), accept(s) or agree(s) to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:
>
> (1) An agent, partner or employee of another; . . .
>
> c. A person commits a crime if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section.
>
> d. If the benefit offered . . . exceeds $1,000.00, but is less than $75,000.00, the offender is guilty of a crime of the third degree.

Both Jerry Palma and Richard Gallo represented to David Mao that they were employees and/or agents working on behalf of Donald Trump and the Trump organization. Clearly, had such relationship existed they would have been agents or employees of Trump. These individuals, purporting to act in such a fiduciary relationship, sought for themselves a payment to assure their favorable action with respect to conduct which would ultimately have been undertaken by their employer with respect to Mr. Mao and his restaurant interests. Such solicitation and

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[8]While the proofs as to the actuality of the criminal conduct are, as noted, only slightly in favor of the state, the serious questions raised by the evidence as to Mao's conduct make the determination that he has failed to establish his good character far more obvious, especially since the standard of proof required by the Act with respect to this issue is clear and convincing evidence and the burden of proof here falls on Mr. Mao.

acceptance of such monies would constitute the crime of commercial bribery. I FIND that Mr. Mao's conference of such violates subsection c of the statute, and that since the offer was $25,000, the gradation of the offense is at the third degree. As such, *N.J.S.A.* 5:12-86c(1) provides that disqualification is automatic.

Criminal Attempt

In addition, *N.J.S.A.* 2C:5-1 provides that:

> A. *Definition of attempt*. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:
>
> (1) Purposely engages in conduct which would constitute the crime if the attendant circumstances were as a reasonable person would believe them to be;
>
> (2) When causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing such a result without further conduct on his part; or
>
> (3) Purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.
>
> b. Conduct which may be held substantial step under subsection a.(3). Conduct shall not be held to constitute a substantial step under subsection a.(3) of this section unless it is strongly corroborative of the actor's criminal purpose.

I FIND that Mr. Mao's conduct in offering to pay, agreeing, and ultimately paying a portion of the initial payment of the bribe constitutes the type of conduct which the criminal attempt statute speaks to. Reasonably believing that Palma and Levin were in a position to act to assure him his goal, that is the choice location in the Taj Mahal, Mao not only engaged in discussions concerning the payment of the inducement, but also actually came forward with $1,000 as a partial downpayment on the bribe. Under these circumstances, his conduct was a "substantial step" in the course of conduct which he assumed would culminate in the commission of the crime, that is the crime of commercial bribery. Again, disqualification is automatic in view of the gradation of the offense, *N.J.S.A.* 5:12-86c(1).

Conspiracy

In addition, Mao's conduct would constitute a violation of *N.J.S.A.* 2C:5-2.86c(1). Conspiracy. This statute provides:

> a. *Definition of conspiracy.* A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:
>
> (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime;
>
> (2) Agrees to aid such other person or persons in the planning or commission of such a crime or of an attempt or solicitation to commit such crime.
>
> . . .
>
> d. Overt act. No person may be convicted of conspiracy to commit a crime other than a crime of the first or second degree or distribution or possession with intent to distribute a controlled dangerous substance . . . unless an overt act in pursuance of such conspiracy is proved to have been done by him or by a person with whom he conspired.

From Mr. Mao's point of view, his discussions with Palma and Levin were for the purpose of arranging the scheme by which he would obtain his restaurant location at the Taj Mahal through the intervention of these individuals acting as agents from the Trump organization. Their meetings were, as he believed, intended to iron out certain details of the arrangement Ultimately, Mao delivered $1,000 to Levin. This last act is a clear overt act upon which a charge of conspiracy may be established. As such, I **CONCLUDE** that Mao's conduct was violative of this statute, and he is automatically disqualified.

Misconduct by Corporate Official

Finally, the Division's complaint also charges a violation of *N.J.S.A.* 2C:21-9. Misconduct by corporate official. This statute makes it a crime for a director or officer of a corporation to "purposely or knowingly use(s) control(s)d or operate(s) a corporation for the furtherance or promotion of any criminal object.

The difficulty with determining whether or not Mao violated this statute is simply that there is no clear evidence in connection with his actions with regard to the Taj Mahal that he was acting on behalf of anyone other than himself. Although he clearly expressed some intention to have partners involved with him in such an operation and ultimately it might well have been that a corporation would have been formed or conceivably even that Tung Hop, Inc. might have become involved with the Taj Mahal operation, it is not at all certain that this would have been the case. It seems best to conclude that Mao was acting on his own as an independent actor and therefore to conclude that he did not violate this statute in that it is not clear that he used the corporation to commit the crime. However, a conviction might lie, despite the above, if it were concluded that Mao did use $1,000 of corporate money to make the payment to Levin. The exact source of the funds used is not clear, as it may have been obtained from the restaurant, or might possibly have been from Mao's own funds. Under these circumstances the proof as to a violation of this particular statute is insufficient to conclude that the statute was violated.

Inimicality

N.J.S.A. 5:12-86c(2) provides that the commission shall deny a casino license to any applicant disqualified because he committed any offense, other than an automatic disqualification under c(1), which would make licensure inimical to the policy of the Act and to casino operations. Pursuant to 86g. the Division is permitted to establish the commission by such persons required to be qualified of any act or acts which would constitute an offense under subsection c. Thus, proof of the commission of an offense not an automatic disqualifier and not the subject of a conviction may still establish the conduct as inimical.

In view of the conclusions reached above, Mao is automatically disqualified from licensure under the dictates of section 86c(1). As such no determination as to inimicality is required.

Rehabilitation

Although there was no specific reference to the issue of rehabilitation during the hearing, in light of the determination above that the evidence has established that Mao's conduct amounted to the performance of several automatically disqualifying criminal actions, the Act requires consideration of whether he has

established his rehabilitation from these disqualifications. Specifically, *N.J.S.A.* 5:12-90h provides for rehabilitation with respect to casino employee licenses and 91d allows for rehabilitation with respect to casino hotel employee registrations. Each provision contains a list of factors to be considered in connection with the determination of whether rehabilitation has been established. The burden of establishing rehabilitation falls on the licensee or registrant.[9]

A review of the testimony indicates that the necessary evidence for consideration of the rehabilitation issue has been presented. Specifically, there is evidence as to the nature and circumstances of the offense, the personal circumstances of Mao, and other factors which relate to the statutory criteria.

Based upon a review of the evidence, I cannot **FIND** rehabilitation. Specifically, Mr. Mao, a mature adult at the time of the commission of the offenses, engaged in commercial bribery, criminal attempt and conspiracy with relation to a business conducted in and under the auspices and authority of the Casino Control Commission. His attempt to influence supposed agents of a casino hotel operator was specifically associated with the conduct of a casino-related enterprise. Thus, the conduct is extremely serious and the context in which it occurred makes it doubly so. There is no indication of any social condition or any unusual circumstance which may have contributed to and in some way mitigated the offense. Although the evidence does not support any finding that this was a repeat offense, in that I have concluded that the evidence is insufficient to establish any prior bribery, the fact that this must be deemed an isolated incident is, in the context, not especially significant. The offense occurred in 1987 and Mao's indictment and completion of his pre-trial intervention program are recent events. Finally, Mao's testimony indicates that he is unwilling to admit that he did anything wrong. Under the circumstances, and in view of the finding that the preponderance of credible evidence establishes his guilty conduct, there is no basis for a finding of rehabilitation.

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[9]The factors for consideration are (1) nature and duties of the position applied for; (2) nature and seriousness of the offense or conduct (3) circumstances under which the offense or conduct occurred; (4) the date of the offense or conduct; (5) the age of the applicant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense or conduct; (8) any evidence of rehabilitation, including good conduct in prison or in the community . . . .

Failure to Cooperate

In addition to the previously considered reasons for disqualification, Count Two of the Complaint alleges that Mao failed to cooperate with the Division in connection with its requests for an interview and that such failure to cooperate violated his responsibilities under sections 80d and 86b of the Act.

N.J.S.A. 5:12-80d reads:

> All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the commission or division, and to cooperate in any inquiry or investigation conducted by the division and any inquiry, investigation or hearing conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee, registrant, or any other person who shall be qualified pursuant to this act refuses to comply, the application, license, registration or qualification of such a person may be denied or revoked by the commission.

N.J.S.A. 5:12-86b provides:

> Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure by 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;

disqualifies such applicant.

The basis for the claim of a lack of cooperation arises as a result of a request to Mao made by Division Senior Agent Mark P. Sivetz by telephone on October 7, 1987. Mao was advised at the time that the Division was issuing a formal request to him to appear for a sworn interview and that he was required to comply pursuant to the Act. On October 8 Mao called Sivetz and agreed to appear at an interview scheduled for Atlantic City on October 13, 1987. On October 8, 1987 Sivetz sent Mao a letter (P-3 in evidence) in which he advised him of the formal request. This letter was actually signed by Mitchell A. Schwefel, Deputy Attorney General. It memorialized Sivetz understanding of Mao's confirmation of the October 8, 1987 appointment. The letter specifically advised the licensee of the requirement of cooperation with the Division in the performance of his duties, *N.J.S.A.* 5:12-79, and the requirements of subsection 80d.

Sivetz testified that he was in Atlantic City on October 13, anticipating Mao's arrival. He was contacted by Brian J. Molloy, Esq., counsel for Mao, who advised that Mao would not be appearing for the scheduled interview. Mao testified at the hearing that he was aware of Sivetz' request to appear, that he had received the October 8 letter, that he forwarded it to his attorney and that he did not appear at the Division interview, on advice of counsel.

In light of the prior conclusions which act to disqualify Mr. Mao from licensure, the issue of his failure to appear at the October 13 interview is superfluous. However, it is quite clear that despite the potential criminal investigation of which Mao might have been the target and in spite of the knowledge of the Division of the contents of the conversations between Mao, Palma and Gallo/Levin, the Division had every right to request Mao's appearance. Although Mao certainly retained his constitutional right to claim his Fifth Amendment privilege in response to questions asked of him at the interview, he had an obligation to appear at the interview and either answer questions in a truthful manner or assert the privilege. That he failed to appear because his counsel advised him not to was a tactical decision, but not one which insulated him from the duty to cooperate. While a claim of the Fifth Amendment might not in itself actually constitute cooperation, appearance at the interview to afford the Division the opportunity to present to Mao its requests for information and to obtain from him either such information or his refusal under the privilege was the type of cooperation demanded by section 80d of the Act. The Commission has afforded the cooperation requirement the "broadest possible" reading "in order to maximize the casinos' obligation to cooperate with the Commission and Division, this is in furtherance of the declaration of policy of the Casino Control Act . . ." which provides specifically in its declarations of policy, *N.J.S.A.* 5:12-1b(8) that in view of the public interest in casino operations and the exception to the general policy with respect to gambling in the state,

> participation in casino operations as a licensee or registrant under this act shall 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 authorities established by this act any assistance and information necessary to assure that the policies declared by this act are achieved. *See Div. of Gaming Enforcement v. Boardwalk Regency Corp.*, 11 *N.J.A.R.* 29, 85 (CCC 1983).

In view of the clear statutory requirements, Mr. Mao's refusal to appear was a violation of his obligations under the Act. The statute provides for a discretionary

In view of the clear statutory requirements, Mr. Mao's refusal to appear was a violation of his obligations under the Act. The statute provides for a discretionary revocation where such a violation occurs. Given the circumstances of this matter, such a disqualification is appropriate.

CONCLUSION AND ORDER

Mr. Mao's conduct in connection with the incidents related herein violated his obligations under the Act, and requires that his casino hotel employee registration be revoked, *N.J.S.A.* 5:12-129(1). Therefore, his casino hotel employee registration must be revoked. In addition, because he lacks the requisite good character, honesty and integrity required pursuant to the qualification standards applicable to junket enterprises and junket representatives, which are akin to those for casino employees, *N.J.S.A.* 5:12-102(b), his licensure as a junket representative also must be revoked. It is so **ORDERED**.

This recommended decision may be adopted, 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 this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

February 1, 1990
Date

JEFF S. MASIN, ALJ

Receipt Acknowledged:

2-2-90
Date

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 5 1990
Date

OFFICE OF ADMINISTRATIVE LAW

jz

EVIDENCE LIST

On behalf of petitioner:

P-1	No exhibit
P-2	No exhibit
P-3	Letter of October 8, 1987
P-4	Report of Sivetz, Re: Lee Interview-Redacted
P-5	For identification only -- Report, Re: Altman-Eisenberg Interview
P-6	Business Entity Disclosure Form -- Tung Hop, Inc.
P-7	Certificate of Incorporation for Tung Hop, Inc.
P-8	For identification only -- Report of Shares Held
P-9	Envelope with tape of May 29 meeting
P-9a	Duplicate tape of P-9
P-9b	Transcript of P-9a
P-10	Envelope with tape of June 11, 1987 phone call
P-10a	Copy of P-10 tape
P-10b	Transcript of P-10a
P-11	Envelope with tape of meeting of June 11 with Jerry Palma
P-11a	Copy of P-11 tape
P-11b	Transcript of P-11a

P-12 Envelope with tape recording of meeting of June 11 with Richard Gallo/Levin

P-12a Copy of P-12 tape

P-12b Transcript of P-12a

P-13 Envelope with tape of June 14, 1987 meeting

P-13a Copy of P-13 tape

P-13b Transcript of P-13a

P-14 Envelope with $1,000 (returned to the custody of the State Police at hearing)

P-15 Envelope with tape of June 17, 1989 meeting

P-15a Copy of P-15 tape

P-15b Transcript of P-15a

P-16 Consensual Interception Authorization Request Order, May 22, 1987

P-17 Excluded from evidence -- Police Report of DiGuiseppe, dated June 25, 1987

P-18 Excluded from evidence -- Report of DiGuiseppe, dated July 21, 1987

On behalf of respondent:

R-1 For identification only -- Police Report of June 8, 1987

R-2 Lease for Jade Beach at Tropicana (Adamar)

R-3 Letter of July 22, 1986 to Bolson

R-4 Letter of June 19, 1986, Mao to Gensamer

R-5 Letter of June 27, 1986, Gensamer to Mao

R-6 Letter of October 10, 1986, Norton to Mao

R-7 Letter of March 18, 1987, Mao to Kohlross

R-8 Pre-Trial Intervention Program -- Order of Dismissal, dated August 7, 1989

R-9 Certification of Kenneth T.C. Hu

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-166
LICENSE NO. 41586-21
REGISTRATION NO. 42820-40
OAL DOCKET NO. CCC 1280-89
ON REMAND FROM CCC 7578-87
AND CCC 7918-86
ORDER NO. 89-43-12

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

ORDER

Complainant, :

v. :

RICHARD J. MARTINEZ, :

Respondent. :

A hearing 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 exceptions 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 November 1, 1989,

IT IS on this 8th day of January 1990, ORDERED that the recommendation to dismiss the complaint is rejected for the following reasons:

(1) Falsification of player rating forms in violation of N.J.S.A. 2C:21-4(a) in order to obtain complimentaries is a serious regulatory matter. The Commission

has frequently found offenses involving a compromise of complimentary services to be disqualifying pursuant to N.J.S.A. 5:12-86(c). See e.g., State v. Harold C. Harman, Docket No. 86-28 (Commission order November 7, 1989), where a casino employee supplied blank complimentary forms to fellow employees; State v. Trudy J. Seher, Docket No. 87-402 (Commission order March 10, 1988), and State v. Tracey R. Owens, Docket No. 86-212 (Commission order February 19, 1988), where employees made false entries into the casino computer so friends could receive complimentaries; State v. Joseph J. Tally, Docket No. 87-410 (Commission order March 9, 1988), which involved the receipt of complimentary meals using a forged complimentary service report, and State v. Michael P. Waters, Docket No. 84-419 (Commission order June 12, 1987), where a casino employee permitted a friend to use the names of hotel guests to receive complimentaries.

(2) The Commission disagrees with the ALJ's conclusion that the respondent has demonstrated his rehabilitation from his falsification offense. As noted above, the offense is considered particularly serious. The respondent repeatedly compromised both his licensure and employment by falsifying player rating forms in an attempt to secure complimentaries for his friend. That the respondent's employer suffered no loss due to his fraudulent activity does not diminish the seriousness of the offense. The initial decision reflects a personal disdain for the practice of issuing complimentaries which, in the Commission's judgment, improperly affected the

ALJ's recommendation to dismiss the complaint. Moreover, the Commission does not consider "comping" to be a social condition which contributed to the offense within the meaning of N.J.S.A. 5:12-90(h)(7). The issuance of complimentaries is a practice deeply rooted in gaming and legally sanctioned in New Jersey subject, of course, to strict regulatory scrutiny. N.J.S.A. 5:12-102(m); N.J.A.C. 19:45-1.46. Given this legislative mandate, the ALJ's personal disdain of the complimentary practice is irrelevant.

(3) The Commission finds that the favorable evidence presented by the respondent which consisted of his own testimony, two letters of reference and a technical school transcript is insufficient to conclude that he demonstrated his rehabilitation by clear and convincing evidence pursuant to N.J.S.A. 5:12-90(h) and 91(d).

(4) Upon consideration of the entire record, relying essentially upon the same evidence noted above, the Commission further concludes that the respondent has failed to establish his 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 the respondent's casino employee license and casino hotel employee registration are revoked; and

IT IS FURTHER ORDERED that Richard J. Martinez 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. 19:48-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1280-89
ON REMAND FROM
CCC 7578-87 ON REMAND FROM
CCC 7918-86
AGENCY DKT. NO. 87-166

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
RICHARD MARTINEZ,
Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Richard Martinez, respondent, pro se

Record Closed: August 18, 1989 **Decided: September 6, 1989**

BEFORE **EDGAR R. HOLMES**, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on October 21, 1986, seeking to revoke the respondent's casino employee license on the grounds that the respondent falsified rating slips to provide preferential treatment to a customer. The respondent

requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A hearing was held on June 1, 1987, and an initial decision was filed on August 21, 1987. The matter was remanded to the OAL by Order of the Commission on November 2, 1987. On November 18, 1988, the respondent failed to attend a hearing and an initial decision was issued on November 29, 1988. On February 15, 1989, the respondent provided the Commission with an explanation for his nonappearance and the matter was again remanded to the OAL for plenary hearing. The matter was tried to a conclusion on August 18, 1989.

STATEMENT OF THE CASE

This case involves the records kept for the purpose of rewarding casino patrons for their time and effort at a casino's gaming tables.

A patron asked Martinez to submit false records to the casino concerning the amount of time the patron actually gambled in order that the patron could maintain his rating as a "high roller".

Martinez complied with the patron's request. He was discovered, arrested, and charged with theft. Later, the theft charges were dismissed. The Division has elected to proceed on the theory that Martinez uttered false business records with the intent to deceive his employer. A criminal statute, N.J.S.A. 2C:21-4a, proscribes such conduct.

CASINO CONTROL ACT

The New Jersey Casino Control Act (Act) N.J.S.A. 5:12-1 et seq. requires employees of the casino industry to meet strict licensing requirements if they perform jobs on the casino floor. N.J.S.A. 5:12-90 . The requirements are more strict for certain "key" employees, N.J.S.A. 5:12-89, less so for hotel employees N.J.S.A. 5:12-91. One requirement is that applicants and licensees not be convicted of certain enumerated crimes. N.J.S.A. 5:12-86c 1 and 90e. The Division may establish that an applicant or licensee committed conduct which would constitute an offense enumerated in the Act even if the conduct was not prosecuted under the criminal

laws of this State N.J.S.A. 5:12-86g. If they have been so convicted, applicants and employees must affirmatively demonstrate their rehabilitation. N.J.S.A. 5:12-90h. Additionally, casino employees must prove by clear and convincing evidence that they possess good character, honesty and integrity. N.J.S.A. 5:12-89b(2) and 90b.

ISSUES

Because Martinez was alleged to have fraudulently prepared gambling records, and despite the fact that theft charges were later dismissed, the following issues are raised in this licensing proceeding.

Did Martinez' conduct constitute the crime of falsification or tampering with records contrary to N.J.S.A. 2C:21-4a?

If so, is Martinez therefore disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86c1 and 90e?

If disqualified, can Martinez show that he is rehabilitated pursuant to N.J.S.A. 5:12-90h?

Does Martinez possess the good character, honesty and integrity for casino employee licensing required by N.J.S.A. 5:12-89b(2) and 90b?

DISCUSSION AND DISQUALIFICATION

The Legislature and the Commission have approved a system of rewards for casino patrons which is generally described as "comping." This is a slang abbreviation for "complimentaries." Complimentaries are services or items furnished to patrons at no cost or at reduced cost. N.J.S.A. 5:12-14a, N.J.A.C. 19:45-1.9.

The industry has developed an elaborate scheme for awarding complimentaries to players. At Harrah's Marina Hotel and Casino, where Martinez was employed, patrons were rated as A, B, C or D players. A formula has been devised which includes the amount of money bet by a player, the amount of time spent at the tables, how many chips were purchased and whether a player wins or

looses. A floor person records this information on players by filling out rating cards. The pit boss checks the rating card and instructs the pit clerk to enter the information into the casino's computer. Points are then assigned to a player based on these factors. The acquisition of a thousand points or more means an "A" rating. A "B" rating is the accumulation of 500 to 999 points. A "C" player has 250 to 499 points and a "D" player has acquired 100 to 249 points. Based upon these ratings, complimentaries are given. An "A" rated player is entitled to the most complimentaries. Any rating must be maintained by frequent play or it is lost.

In 1986, Joseph Scamardella was an "A" rated player at Harrah's Marina Hotel and Casino. He sometimes bought chips with cash, sometimes on credit. Scamardella became friendly with Harrah's dealers and employees. Richard Martinez, the respondent, became especially close to Scamardella. He had access to Scamardella's yacht which was docked at Harrah's Marina. He had dinner at Scamardella's home. He met Scamardella in Puerto Rico and stayed with him as a guest at the El San Juan Casino.

Scamardella was concerned to keep his "A" rating. On some occasions when he did not feel like playing or was to ill to play, he asked Martinez "to put in some time for him." By this Scamardella meant for Martinez to fill out a rating card indicating that Scamardella played at the casino even though he did not play in fact. Martinez did this, by his own admission, about 15 times. Martinez knew the purpose of the rating cards, he was both a dealer and a floor person.

It appears that Scamardella did not actually require the false rating slips filled in by Martinez. Apparently Scamardella lost enough money regularly at the casino to have earned an "A" rating all by himself. But Martinez did not know this.

When Martinez turned in a rating card which contained false information to the pit boss, he knew that Harrah's Marina and Casino Hotel, his employer, would rely upon that rating card for the purpose of assigning points to Scamardella. He also knew that, based upon those points, Harrah's would in all likelihood, "comp" Scamardella. In other words, the Casino would give Scamardella some complimentary items as a reward for his faithful attendance at their gaming tables. By doing so, Martinez violated a criminal statute, N.J.S.A. 2C:21-4a, which makes the falsification of a record, or the uttering of a false record, a criminal act if the actor

intends to deceive or injure anyone. Martinez intended to deceive Harrah's casino, his employer. He wanted Harrahs to think Scamardella played when in fact he did not play at the casino.

Accordingly, I **CONCLUDE** that Richard Martinez committed conduct which would constitute the offense proscribed by N.J.S.A. 2C:21-4a, and I further **CONCLUDE** that he is disqualified from casino employee licensure because N.J.S.A. 2C:21-4a is an offense listed in N.J.S.A. 5:12-86c(1).

REHABILITATION

A licensed casino employee who has been disqualified pursuant to N.J.S.A. 5:12-86c and 90e can nevertheless retain his license by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h. The following facts must be considered: (1) The nature and duties of the position applied for; (2) the nature and seriousness of the offense or conduct; (3) the circumstances under which the offense or conduct occurred; (4) the date of the offense or conduct; (5) the age of the applicant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense or conduct; (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.

I **FIND** that:

1. **The respondent is dual rated as a floor person and will have continuous patron contact.**

2. **The offense is not serious. No harm occurred.**

3. **The offense occurred in a casino and was an abuse of the respondent's authority. He was expected to accurately and honesty record a patrons bets, playing time, and wins and losses. He falsified these in order to help his friend look like a bigger loser than he really was.**

4. The offense occurred on June 28, 1986.

5. The respondent was 25 years old when the offense occurred.

6. The offense occurred approximately 15 times over a period of a year.

7. Comping casino patrons is legal. That said, there is nothing else to recommend the practice but its efficacy in keeping patrons playing past their time. That is why Martinez' conduct was not serious and should be excused.

8. The State's witness who actually discovered the respondent's false entries testified that Martinez was an excellent employee and has learned his lesson. She would welcome him back to the industry. A former supervisor describes him as "above all honest." The respondent and others described what he did as a mistake. The respondent reiterated over and over how sorry he was and that it would not happen again. In addition, the respondent has returned to school and has a perfect 4.00 (A) average.

I **CONCLUDE** that the respondent has demonstrated his rehabilitation by clear and convincing evidence.

GOOD CHARACTER, HONESTY AND INTEGRITY

In addition to the rehabilitative evidence, the respondent submitted letters testifying to his good character, honesty and integrity. He also relied on his expressions of remorse, the fact that he intended no harm, and his honest explanations to the police when apprehended, to illustrate his good character. Martinez appears to be a shy person; he was somewhat reticent in his testimony. I observe that the respondent was naive. He is not so naive now. Even persons with the highest reputation for good character, honesty and integrity make mistakes. This respondent has paid for his mistake. I **CONCLUDE** that the respondent possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to sections 89b(2) and 90b.

I **ORDER** that the complaint filed herein be **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 6, 1989
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

9/11/89
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 11 1989
DATE

Jayne LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Elisa Ciboldi
Ronald Bunkowski
Richard Martinez
Robert Germano

For the Respondent:

Richard Martinez

EXHIBIT LIST

For the Petitioner:

J-1 Complaint and Summons
J-2 Letter August 1, 1986 from Judge Porreca to Sheri Tanne, Deputy Attorney General
P-1 Copy of Microfiche
P-2 Copy of Rating Slips

For the Respondent:

Z-1 Craps Dealer Evaluation
Z-2 Grades for First Semester
Z-3 Letter from Jodi Eafrate, June 28, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-70
APPLICATION NO. 73302-22
REGISTRATION NO. 77105-40
OAL DOCKET NO. CCC 05340-89
ORDER NO. 90-4-11

APPLICATION OF ROBERT A. MAY
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed returning this matter to the Casino Control Commission for appropriate disposition in accordance with the Act; and it appearing that the applicant intentionally failed to disclose his shoplifting conviction in 1988 on his Personal History Disclosure Form; and the Commission having considered the entire record of these proceedings at its public meeting of January 24, 1990,

IT IS on this 14th day of March 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is denied upon the applicant's disqualification pursuant to N.J.S.A. 5:12-86(b); and

IT IS FURTHER ORDERED that this denial shall not affect Robert A. May's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
FAILURE TO APPEAR
OAL DKT. NO. CCC 5340-89
(ON REMAND CCC 7944-88)
AGENCY DKT. NO. 89-EA-70

ROBERT A. MAY,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

No appearance by or on behalf of petitioner

James J. Armstrong, Deputy Attorney General, for respondent (Peter N Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: October 31, 1989 Decided: December 15, 1989

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

This matter concerns the application of Robert A. May (petitioner) for licensure as a casino employee under the Casino Control Act (N.J.S.A. 5:12-1 et seq.). By letter report to the Casino Control Commission dated August 19, 1988, the Division of Gaming Enforcement raised questions concerning the petitioner's qualification for licensure. The Commission subsequently afforded the petitioner an opportunity for a hearing.

The petitioner's request for a hearing was received by the Commission on October 11, 1988. On November 1, 1988, 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 conducted by Administrative Law Judge Edgar R. Holmes on January 20, 1989.

A hearing in this matter was conducted by the undersigned on March 17, 1989. On May 14, 1989, an initial decision was issued which recommended to the Casino Control Commission that the application of the petitioner for licensure as a casino employee be granted.

On May 19, 1989, the Division of Gaming Enforcement filed a motion with the Casino Control Commission seeking an order for remand or to reopen the hearing, pursuant to N.J.A.C. 1:1-18.5(b). Although the Division did not take exception to the initial decision, it requested that the matter be remanded because the Division had learned since the hearing that the petitioner had been convicted of shoplifting, contrary to N.J.S.A. 2C:20-11, on March 8, 1988. This evidence was not placed on the record during the hearing because the Division was not aware of it and the petitioner did not volunteer it.

After considering the matter at its public meeting of June 21, 1989, the Commission on June 30, 1989, ordered that the matter be remanded to the Office of Administrative Law for consideration of the following issues:

(1) What effect, if any, does the applicant's March 8, 1988, conviction have upon his qualification for licensure and registration as a casino employee;

(2) What effect, if any, does the applicant's failure to reveal the conviction have upon his qualification for licensure and registration as a casino employee.

The Office of Administrative Law received the remand from the Commission on July 20, 1989. By letter dated September 25, 1989, the parties were advised that a telephone prehearing conference should be arranged and that a mutually agreeable hearing date would then be set. The parties agreed to participate in a telephone prehearing conference on October 20, 1989. This scheduling was confirmed by a Notice of Telephone Prehearing Conference which was sent to the parties on October 13, 1989.

At the scheduled time of 4:00 p.m. on October 20, 1989, the petitioner failed to be available to participate in the telephone prehearing conference. More than ten days have passed since the scheduled prehearing date. During this period, the petitioner has not contacted the Office of Administrative Law to offer any explanation for his failure to participate. Therefore, I **CONCLUDE** that petitioner no longer seeks relief. In accordance with N.J.A.C. 1:1-14.4(a), I dismiss the matter before the Office of Administrative Law and return it to the Casino Control Commission for appropriate disposition in accordance with the Casino Control Act and regulations promulgated thereunder.

This recommended decision may be adopted, 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 this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

December 15, 1989
Date

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12/18/89
Date

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 19 1989
Date

OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

None

WITNESSES

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-141; 89-134
LICENSE NO. 42787-21
REGISTRATION NO. 37008-40
OAL DOCKET NO. CCC 5880-89
(8825-88 ON REMAND)
ORDER NO. 90-4-9

APPLICATION OF SHARON P. MAYS
FOR RENEWAL OF A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

ORDER

v.

SHARON P. MAYS,

Respondent.

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of January 24, 1990,

IT IS on this 29th day of January 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Sharon P. Mays for renewal of her casino employee license is denied

and her casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Sharon P. Mays is prohibited from reapplying for or obtaining 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5880-89

AGENCY DKT. NOS. 89-134 & 89-EA-141

(ON REMAND - CCC 8825-88)

SHARON P. MAYS,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Linda L. Lawhun, Esq., for petitioner

R. Lane Stebbins, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: November 13, 1989 Decided: December 1, 1989

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

This matter is in the Office of Administrative Law on remand to explore issues which the Casino Control Commission believed require further development. The original Initial Decision is incorporated herein by reference. Specifically, the Order of Remand directs the following:

(1) further information concerning the circumstances of Ms. Mays' offense, including, but not limited to, the date of her arrest for conspiracy to distribute CDS and any and all police reports pertaining to the arrest;

(2) whether or not Ms. Mays failed to disclose her arrest for conspiracy on the Personal History Disclosure Form - 2A filed October 16, 1986, a copy of which is to be included in the record on remand;

(3) further discussion as to the issue of rehabilitation and, in particular, the weight ascribed to Ms. Mays' character references;

(4) further inquiry as to whether Alfred M. Smith, Ms. Mays' former supervisor at Resorts International Hotel and Casino, was aware of her conviction at the time he wrote the letter of reference entered as exhibit R-2.

The parties stipulated at the outset that petitioner was arrested approximately one week after she filed her Personal History Disclosure Form (PHDF) and thus could not have disclosed this, and that the police reports in the matter focus on the other conspirators. A review of these reports provides additional insight into the conclusion already reached by the sentencing judge and noted in the original Initial Decision that petitioner's role in this conspiracy was limited.

With respect to the third issue noted by the Commission, the character letters which she submitted were given little weight. A number of the letters are addressed to the sentencing judge and do not go to petitioner's post-sentencing rehabilitation. These letters, as well as some of the others in evidence, tend to show that she comes from a family which is well-respected in the community. Letters from casino supervisors show that she is a conscientious and able employee. Her probation officer wrote that she was "consistent with her reporting, and has complied with all conditions of her probation." Moreover, at the prior hearing of the matter, her father and brother spoke of this incident as one mistake in an otherwise well-directed life. All of this information aids her cause. However, in the effort to understand whether an applicant is rehabilitated, we must try to separate her own positive acts from the reputations and good deeds of those around her who are legitimately interested in her success. It does appear that she is an able worker and she has not been involved in any subsequent offense. Nevertheless, approximately five weeks after her conviction, petitioner filed a false employment application with Resorts in which she denied ever having been convicted of a crime. She testified at the original hearing that she just wanted to get through the door and that she subsequently disclosed her conviction. In support of that testimony, Mr. Alfred M. Smith, her supervisor at Resorts, submitted a second letter for purposes of the remand hearing in which he states that approximately one week after petitioner was hired she discussed with him her conviction for "possession of a controlled dangerous substance." It does appear, therefore, that Mr. Smith was aware that petitioner had been involved in some type of

drug-related offense at the time he wrote his very supportive original letter. In my own view, however, this does not mitigate the false statement. Were that so, applicants would be free to say as they pleased on these forms, only to explain after they were hired and after the employer has some investment in them that they had withheld derogatory information.

Finally, petitioner had testified during the original hearing that she applied for a position at Trump Plaza in March 1989, and that she disclosed her 1986 drug offense at that time. Respondent did not have this application available at the original hearing. The application was produced on remand and shows that though petitioner did acknowledge a conviction, it was for assault and battery on a police officer in 1978. The box on the form specifically directs that a separate sheet be used if there is no room to complete the list of offenses. Petitioner testified that she was in a hurry when she completed this form and though she intended to attach a separate sheet disclosing the 1986 drug offense, she forgot to do so. She also testified that her supervisors at Trump Plaza were made aware of her offense. I do not accept that petitioner simply forgot to list the more recent offense; it appears rather that she chose to disclose the remote incident. This is consistent with her earlier behavior.

The balance of evidence in the original hearing led to the conclusion that the brief period of time which had passed since petitioner's sentencing, in combination with her false application to Resorts, did not permit the inference that she had been rehabilitated. The Trump Plaza application now further undermines her cause. Based on the record of both hearings, it is **ORDERED** that petitioner's application to renew her casino hotel employee license be **DENIED** and that her casino hotel registration be **REVOKED.**

This recommended decision may be adopted, 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.

12/1/89
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

12-5-89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 7 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

None

EXHIBIT LIST

P-5	Trump Plaza Employment Application
R-15	Letter, Al Smith to Sharon Mays, dated August 28, 1989
R-17	Police Reports

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-397
APPLICATION NO. 070371-21
(REGISTRATION NO. 049042-40)
OAL DOCKET NO. CCC 3492-89
ORDER NO. 90-8-2

APPLICATION OF KEVIN E. MUNN
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 February 21, 1990,

IT IS on this 24th day of April 1990, ORDERED that the initial decision is adopted; 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

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining 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 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTONG, ACTING CHAIR

BY: Dennis Daly 10/15
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3492-89
AGENCY DKT. NO. 89- EA-397

APPLICATION OF
KEVIN E. MUNN FOR A
CASINO EMPLOYEE LICENSE

Kevin E. Munn, petitioner, pro se.
R. Lane Stebbins, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney).

Record Closed: November 28, 1989 Decided: January 12, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

On March 27, 1989, the Division of Gaming Enforcement delivered a letter to the Casino Control Commission (CCC) recommending that it deny the casino employee license application of Kevin E. Munn. On May 8, 1989, the CCC received a request for a hearing from the applicant. On May 11, 1989, the CCC transmitted the matter to the Office of Administrative Law (OAL) for a hearing pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 31, 1989. The prehearing order recited three issues to be resolved at a plenary hearing.

The first issue to be resolved is whether applicant's employee licensure would be inimical to the policy of the Casino Control Act (Act) because he is alleged to have

committed theft contrary to N.J.S.A. 2C:20-7. N.J.S.A. 5:12-86(2) and 90e. Section 86g of the Act permits such a proceeding even though, as here, the State has not prosecuted the conduct. Part of the inimicality analysis includes the concept of rehabilitation. Donna Davis 8 N.J.A.R. 301, 314. Rehabilitation is therefore a second issue to be determined.

The third issue for resolution is whether the applicant possesses the good character, honesty and integrity required for casino employee licensing pursuant to N.J.S.A. 5:12-89b2 and 90b.

Applicant is a well regarded casino hotel registrant who enjoys the confidence and respect of his supervisors at the Showboat Hotel and Casino. He has also enjoyed rapid promotion and, in a very short period of time, has risen to the position of convention service supervisor. He has also won kudos from clients of the hotel's convention service.

Unfortunately, on September 10, 1985, while visiting at a friend's house, a coworker sold the applicant two VCR's stolen from Trump Castle Hotel and Casino, the applicant's then employer. The coworker told the applicant he had VCR's to sell at $100 each. The applicant bought two, his friend bought three. When the applicant saw the VCR's, he knew immediately that they were stolen from Trump Castle because they still had the shipping labels attached to the containers. He was "afraid", however, to renege on the sale because he would not "get his money back."

Of course the theft was discovered, the applicant was arrested, and he was admitted to the pretrial intervention program and so escaped from this ordeal without a criminal record, although the applicant described the discomfort he felt when his own family perceived him as a thief.

But for this event, the applicant has no other criminal arrests. He reported that as a juvenile he was twice apprehended; once for possessing firecrackers, and once for being out on the ice. These are insignificant police contacts.

During the course of his testimony, the applicant detailed a long history of drug abuse resulting in his voluntary admission into a drug rehabilitation program

for approximately thirty days in the early summer of 1989. He said that he smoked marijuana for six or seven years and used cocaine for six months prior to his admission into the rehabilitation facility. His drug habit cost him $200 or $300 per week according to his testimony.

Apparently there was nothing humbling about the applicant's experience of drug addiction and his subsequent entry into a rehabilitation program. He indicated that "compared to the people I see licensed now, I stand out among most people." Unfortunately, the applicant is too "busy" to keep up with his attendance at N.A. meetings although he recognized the necessity of attending meetings in his testimony.

In order to raise the issue of inimicality, the Division must prove that an offense was committed. The applicant has admitted his purchase of two VCR's, which he valued at $300 each, knowing that the VCR's had been stolen. This constitutes the crime of receiving stolen property, contrary to N.J.S.A. 2C:20-7. The offense is a crime of the third degree because the amount involved exceeds $500, but is less than $75,000. N.J.S.A. 2C:20-2b(2). The offense would also constitute a statutory disqualifier according to N.J.S.A. 5:12-86c(1). Section 86 c(1) of the Act enumerates the criminal statutes for the conviction of which any applicant would be disqualified from casino employee licensure. N.J.S.A. 5:12-90e. However, in this case, it is unnecessary to make that determination, as will be seen below. A statutory disqualifier, pursuant to 86c(1), was not alleged in the Division's letter of objection to the Commission, and it was not mentioned in the prehearing order.

As a result of the Division's proofs and the applicant's admissions, I **FIND** that the applicant committed an offense.

Because the stolen items which the applicant received were stolen from the applicant's employer, a New Jersey licensed casino and because the applicant admitted a history of drug abuse which included the use of, and receipt of, drugs in a casino facility, I **CONCLUDE** that the applicant has committed an offense which would render his licensure inimical to the policies of the Casino Control Act and to gaming operations.

I come reluctantly to this conclusion. The theft offense appeared to be aberrant behavior for this applicant. In addition, he was twenty years old when it occurred; still a youth. He has no police record. His supervisors appear to have great confidence in him. He was admitted to pretrial intervention and completed community service. The offense occurred more than four years ago.

The applicant's drug use was not an issue at the prehearing conference; he only blurted it out at the plenary hearing. He meant only to illustrate that he was drug free and to contrast himself favorably with other licensees whom he supposes to be drug users.

The information therefore appeared gratuitously in the record and results, in part, from the applicant's attempt to be honest concerning his background Nevertheless, he acknowledged on cross examination that he frequently worked while "high" and that he also received drugs at casino hotels. These illegal acts were apparently repeated on numerous occasions. Coupled with the theft offense, they lead to the conclusion that the applicant's licensure would be inimical to the policy of the Act. The Act emphasizes that legalized gambling must be maintained free of any criminal influence in order to retain public confidence and trust. N.J.S.A 5 12 1(7).

For all of the reasons above, I also **CONCLUDE** that the applicant has failed to establish by clear and convincing evidence that he possesses the requisite good character, honesty and integrity. N.J.S.A. 5:12-89b(2) and 90b.

I **ORDER** that the application for casino employee licensure filed herein be denied.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

1/12/90
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 18 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

ldr

WITNESS LIST

For the petitioner:

Kevin Munn

For the respondent:

Alan Weinstein

Kevin Munn

EXHIBIT LIST

For the petitioner:

P-1 Letter from Cynthia Appenzeller

P-2 Letter from Solomon Mills

P-3 Letter from Barbara Levitt

For the respondent:

R-1 Indictment

R-2 Dismissal of charges

R-3 State police property information report

R-4 Detective Lentino's report

R-5 Detective Higgins' report

R-6 Detective Weber's report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-6
LICENSE NO. 64396-21
OAL DOCKET NO. CCC 5977-89
ORDER NO. 90-4-13

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

Complainant,

v.

ORDER

JOSEPH E. NOCERA

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; and the Commission having considered the entire record of these proceedings at its public meeting of January 24, 1990,

IT IS on this 31st day of January 1990, ORDERED that the initial decision is rejected for the following reasons:

(1) the Commission rejects the ALJ's conclusion that the respondent bore the burden of proving rehabilitation by clear and convincing evidence. This finding is contrary to to the Commission's decision in State v. Michael P. Waters, Docket No. 84-419 (Commission order June 12, 1987) and State v. Thomas J. Pullman, Docket No. 89-128 (Commission order October 19, 1989). In cases involving a per se disqualifier under section 86(c)(1) of Act, the rehabilitation factors are considered after a finding of disqualification is made. Rehabilitation must then be proven by clear and convincing evidence. In cases involving an inimical offense under section 86(c)(2), the

rehabilitation criteria must be considered prior to a determination that an offense is inimical. In a revocation proceeding, the burden of proving an inimical offense rests with the Division of Gaming Enforcement - it does not shift to the respondent;

(2) the Commission finds that the respondent has been convicted of an inimical offense based upon the insufficiency of the rehabilitation evidence, specifically considering the recency of the offense, the repeated number of times the respondent compromised his employment by procuring complimentary credits, and the absence of any affirmative evidence such as witnesses or references;

(3) the Commission finds that in light of the absence of rehabilitation evidence, the respondent has failed to demonstrate his good character, honesty and integrity; and

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked; and

IT IS FURTHER ORDERED that Joseph E. Nocera 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5977-89
AGENCY DKT. NO. 90-6

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
JOSEPH E. NOCERA,
Respondent.

James J. Armstrong, Deputy Attorney General, for the petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Joseph E. Nocera, respondent, pro se

Record Closed: November 6, 1989 Decided: December 20, 1989

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

PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on July 6, 1989, seeking the revocation of the casino employee license of the respondent, Joseph E. Nocera, pursuant to the provisions of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq.

Based on the application of Deputy Attorney General James J. Armstrong, on behalf of the Division, the casino employee license of the respondent was suspended after the filing of the Division's complaint. Mr. Nocera requested a hearing and the matter was transmitted to the Office of Administrative Law on August 7, 1989, 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 telephone prehearing conference was held by Administrative Law Judge Joseph F. Fidler on September 12, 1989, and at that time the parties agreed that the issues in this matter are:

1. Has the respondent been convicted of wrongful impersonation, contrary to N.J.S.A. 2C:21-17, and if so, would his continued licensure as a casino employee be inimical to the policy of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and to casino operation, pursuant to section 86c(2) of the Act.

2. Has the respondent established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act.

After the prehearing conference, the matter was transferred to the undersigned for the purpose of hearing the case and rendering an initial decision. The hearing took place on November 6, 1989, at the Office of Administrative Law in Atlantic City, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** the facts in this matter are not in dispute.

While employed as a security guard by Harrah's Marina Hotel and Casino (Harrah's), Mr. Nocera applied for and obtained a Harrah's Gold Card, which is a type of card that is given to patrons of the casino. As these Gold Card-holding patrons gamble, they are given complimentary credits. These credits have a monetary value and can be used by the patrons to purchase drinks, meals, etc. in the casino.

According to Mr. Nocera, he obtained the Gold Card as a joke and he did not impersonate anyone. Mr. Nocera stated that he was in his security uniform, with his

name and his security badge clearly visible, when he submitted the Gold Card application. Mr. Nocera used the name of Kirk Slemmer, his friend's brother on the application; however, he stated that the person who issued the card knew him and knew he was using the name of someone else.

On several occasions, Mr. Nocera, while in his security uniform, gave the Gold Card to a slot attendant who assigned complimentary credits to the name on the card. Over a period of time, Mr. Nocera accumulated $166.00 in credits on the Gold Card. Mr. Nocera stated that the slot attendants who gave him these credits knew who he was and knew that his name was not on the card. However, on one occasion Mr. Nocera got complimentary credits placed on his card by representing that he was holding the card of a patron who had just hit a jackpot. Mr. Nocera admitted that on this one occasion there was a misrepresentation.

Mr. Nocera was arrested at Harrah's on May 5, 1989, and was charged with wrongful impersonating, a violation of N.J.S.A. 2C:21-17 (P-1). At the time of his arrest, Mr. Nocera stated that he had used the card to get complimentary credits on four or five occasions and that he never intended to use the credits to purchase anything at the casino (P-1). Mr. Nocera stated that neither his friend nor the friend's brother knew about the card. Thereafter, Mr. Nocera pled guilty and paid a fine of $75.00 and court costs of $30.00 (P-2). When he pled guilty, Mr. Nocera did not think that his action on the guilty plea would have any effect on his casino employee license.

As a result of his May 5, 1989 arrest, Mr. Nocera lost his job at Harrah's. Mr. Nocera had worked for Harrah's for about 20 months. About 30 days thereafter, he became employed as a security officer at Bally's Grand Hotel and Casino (Bally's). Mr. Nocera worked for Bally's for about three or four months and lost his job when his casino employee license was suspended by the Commission.

Mr. Nocera then worked as a security guard for Onclove Condominiums in Atlantic City for about four months. He lost this job because of a disagreement regarding the shift he was to work. Shortly before the hearing in this matter, Mr. Nocera obtained a job as a waiter at the Embassy Restaurant, and he is also working for Pyramid Concrete.

Mr. Nocera is 27 years old, single with no dependents, and considers himself to be a jokester and a prankster. Mr. Nocera knew it was wrong and a mistake for him

to obtain a Harrah's Gold Card but did it as a joke. He wanted to see how many credits he could get on the card; however, he stated that he never intended to use the credits to purchase anything, nor did he intend to give the card to someone else.

Mr. Nocera felt that he has paid for his mistake because he was embarrassed and humiliated when he was arrested on the floor of the casino and he had financial problems after he lost his job. Also after his arrest, he had an argument with his girl friend and she "kicked" him out of their apartment. He now lives in a rooming house in Atlantic City.

Mr. Nocera does not have a previous criminal record. He had been arrested on two occasions when he was between 18 and 20 years old for the nonpayment of traffic tickets.

CONCLUSIONS OF LAW

In this matter, Deputy Attorney General Armstrong argued that the facts show that the respondent pled guilty to the offense of wrongful impersonating, a violation of N.J.S.A. 2C:21-17. Although this criminal action is not an automatic statutory disqualifier, pursuant to N.J.S.A. 5:12-86c(1), Mr. Armstrong argued that this action is inimical to the policy of the Act, and that it constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g.

Based on the respondent's admissions during the hearing, I **CONCLUDE** that the Division has shown a violation of N.J.S.A. 2C:21-17, which is not an automatic disqualifier, pursuant to N.J.S.A. 5:12-86c(1). In order to decide whether this conduct is inimical, pursuant to N.J.S.A. 5:12-86(c)2, it is necessary to consider the circumstances underlying the incident as well as the respondent's subsequent conduct, i.e., his rehabilitation. Donna Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244 (1979). Therefore, it is appropriate to look at the following standards, which are set forth in the Act as factors which the Commission shall consider in order to determine whether the individual has demonstrated rehabilitation:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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 recommendations of persons who have or have had the applicant under their supervision. [N.J.S.A. 5:12-90h]

As to rehabilitation, the respondent was a mature person at the time he commited the disorderly persons offense of wrongful impersonating; however, this is his only criminal offense.

Although, as argued by Deputy Attorney General Armstrong, the respondent used the card on several occasions to obtain complimentary credits, I **CONCLUDE** that the respondent's obtaining and use of the Harrah's Gold Card was a single foolish incident. As a result of this incident, Mr. Nocera was arrested, he lost his casino job and his casino employee license was temporarily suspended. All of this has had a substantial impact on Mr. Nocera, and I accept his statement that if his casino employee license were restored there would be no repetition of this behavior or any similar incidents.

In view of the facts, and notwithstanding that the disorderly persons offense occurred only six months ago, I **CONCLUDE** that Mr. Nocera has shown by clear and convincing evidence that he is rehabilitated pursuant to the standards contained in N.J.S.A. 5:12-90h. Also, I **CONCLUDE** that Mr. Nocera's action does not constitute an inimical offense pursuant to N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g.

Deputy Attorney General Armstrong also argued that because of his criminal conduct, Mr. Nocera cannot show by clear and convincing evidence that he has the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2) and 90b. Based on the facts in this matter, I **CONCLUDE** that the

respondent has shown by clear and convincing evidence that he has the necessary good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2) and 90b.

Therefore, I **ORDER** that the casino employee license of Joseph E. Nocera not be revoked.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 20, 1989
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

12/20/89
DATE

Kim Ilacqua
CASINO CONTROL COMMISSION

Mailed to Parties:

Dec 26, 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

OAL DKT. NO. CCC 5. /-89

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 New Jersey State Police reports regarding the arrest of Joseph E. Nocera on May 5, 1989

P-2 Complaint filed against Joseph E. Nocera in the Atlantic City Municipal Court, dated May 7, 1989

For the Respondent:

None

WITNESSES:

For the Petitioner:

None

For the Respondent:

Joseph E. Nocera

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-48
APPLICATION NO. 03923-11
LICENSE NO. 017465-21
OAL DOCKET NO. CCC 2854-89
ORDER NO. 90-18-11

APPLICATIONS OF BRIAN S. O'NEILL
FOR A CASINO KEY EMPLOYEE LICENSE AND FOR RENEWAL OF A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and additional briefs having been filed at the Commission's request; and the Commission having considered the entire record of these proceedings at its public meeting of May 2, 1990,

IT IS on this 10th day of May 1990, ORDERED that the initial decision is modified as follows:

(1) The ALJ purports to quote N.J.S.A. 2C:2-8d on page 8 of the initial decision. However, the quote provided is from the pre-1983 version of this statute. The statute was amended to delete the very language quoted by the ALJ and to substitute the following: "...if by reason of such intoxication the actor at the time of his conduct did not know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong." L. 1983, c. 306, eff. Aug. 26, 1983; and

(2) The ALJ stated that, "a court of competent jurisdiction has determined that the petitioner was neither guilty of Burglary... nor Theft by Unlawful Taking.... The Court specifically

referenced petitioner's intoxication as substantial grounds to excuse or justify petitioner's conduct." Init. dec. at 8. This statement is glaringly inaccurate. Because the applicant pled guilty to the downgraded charge of criminal trespass in violation of N.J.S.A. 2C:18-3, he was never tried on the burglary or theft charges much less acquitted of them. Moreover, although the sentencing judge referred to the applicant's intoxication as a "mitigating factor...tending to excuse or justify the defendant's conduct," he further indicated that these factors were insufficient to establish a defense from the offense of criminal trespass; and

(3) The Commission hereby finds that the applicant did commit the third degree offense of theft by unlawful taking, a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and (g) but that pursuant to N.J.S.A. 5:12-90(h), he has established his rehabilitation by a preponderance of the evidence in the record. Unfortunately rehabilitation is not available pursuant to N.J.S.A. 5:12-89.

The applicant pled guilty to the fourth degree offense of criminal trespass which requires "knowing" conduct. (N.J.S.A. 2C:18-3a). In accepting the applicant's guilty plea, the sentencing judge considered and rejected his intoxication as a defense. While this conviction does not preclude the applicant from raising the defense of intoxication to the offense of theft, we believe that it significantly undermines that defense. In addition, the evidence suggests purposeful conduct in that the applicant took the money only after a thorough and careful search and that the applicant thereafter attempted to conceal his actions by secreting the money in a sock and hiding it under a tree. In light of these facts the Commission cannot find that the applicant's faculties were so prostrate that he was incapable of forming "the

purpose to deprive" required for this offense.

Among the more significant factors which compel the Commission to conclude that the applicant has been rehabilitated are: the applicant's intoxication at the time of the offense; the fact that the offense took place three years ago, his lack of a prior or subsequent criminal record; his successful rehabilitation from alcoholism; and his outstanding record in the casino industry.

IT IS FURTHER ORDERED that Brian S. O'Neill's application for renewal of his casino employee license is granted and his application for a casino key employee license is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

IT IS FURTHER ORDERED that Brian S. O'Neill is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2854-89

AGENCY DKT. NO. 89-EA-48

BRIAN S. O'NEILL,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Lloyd D. Levenson, Esq., for petitioner (Cooper, Perskie, April, Niedelman, Wagenheim & Levenson, attorneys)

R. Lane Stebbins, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: December 15, 1989 Decided: February 16, 1990

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) alleges that petitioner, Brian S. O'Neill, engaged in conduct which constitutes a disqualifying offense, as provided by section 86g of the Casino Control Act (Act) and, therefore, it objects to the issuance of a casino key employee license to petitioner and to the renewal of his casino employee license. The Division also

alleges that petitioner lacks the requisite good character, honesty and integrity for either license.

On August 2, 1988, the Division filed a letter with the Casino Control Commission (Commission) objecting to the petitioner's application for a casino key employee license. Subsequently, on March 20, 1989, the Division filed a letter with the Commission objecting to the renewal of petitioner's casino employee license. On April 13, 1989, the matter was transmitted from the Commission to the Office of Administrative Law (OAL) 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 29, 1989, at which, among other things, the date of September 25, 1989 was established for the hearing. The hearing was adjourned at the request of petitioner's counsel due to the unavailability of a witness. The matter was rescheduled for December 15, 1989 and was heard on that date at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record closed on December 15, 1989. Application for an extension to execute this initial decision was granted.

ISSUES

The issues to be determined by this tribunal and as agreed to by the parties at the prehearing conference are these:

A. Whether the petitioner possesses the requisite good character, honesty and integrity for the renewal of his casino employee license, pursuant to N.J.S.A. 5:12-89b(2), as incorporated in Section 90b of the Casino Control Act (Act)?

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino key employee license, pursuant to N.J.S.A. 5:12-89b(2)?

C. Whether the petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:30-3 Theft?

4. Whether the petitioner may demonstrate rehabilitation for the renewal of his casino employee license pursuant to Section 90h of the Act?

FINDINGS OF FACTS

Based upon the testimony and documents proffered at the hearing and having given fair weight thereto, I **FIND** the following **FACTS** in this matter:

Petitioner, who was 29 years of age at the time of hearing, was arrested on April 26, 1987 by the Brigantine, New Jersey Police Department and charged with Burglary, N.J.S.A. 2C:18-2a (1), and Theft of Movable Property, N.J.S.A. 2C:20-3a. The alleged offenses were committed upon Ms. Bonnie Putterman and Ms. Diane Sullivan. The two women resided in an apartment above the apartment occupied by petitioner and his roommate at 1006 East Beach Avenue, Brigantine, New Jersey.

On Sunday April 26, 1987, petitioner consumed three, six-packs of 12 ounce cans of beer and became extremely intoxicated. At a time not set forth on the record but before five o'clock in the afternoon of April 26, 1987, petitioner entered the apartment of Ms. Putterman and Ms. Sullivan and took money belonging to both women. Ms. Putterman and Ms. Sullivan were not in the apartment when petitioner entered and took the money. Subsequently, Ms. Putterman observed that money was missing from a dresser drawer in her bedroom and immediately telephoned the Brigantine Police. Ms. Sullivan also discovered that money had been taken from her bedroom and from a purse located in the apartment living room.

Petitioner, who was in an extreme state of intoxication, placed the money in a sock and hid the sock under a tree behind the apartments. Petitioner subsequently revealed the location of the money when interrogated by the police.

On May 21, 1987, the Atlantic County Grand Jury handed up a two count Indictment No. 87-05-0919B against petitioner charging him with sections 18-2 and 20-3 offenses of the New Jersey Code of Criminal Justice. On October 9, 1987, petitioner appeared before the Honorable Robert Neustadter, J.S.C., with counsel and entered a plea of guilty to one count of the Indictment which had been amended from Burglary to the fourth degree offense of Criminal Trespass, N.J.S.A. 2C:18-3a. Judge Neustadter sentenced petitioner to: Probation, one year; Atlantic

County Jail, one day with one day credit served; a fine of $1,000 to be paid within one year of the probationary period; Alcohol counseling; Community Service of 50 hours; $30 to the Violent Crimes Compensation Board (VCCB). In addition, the victims, Ms. Putterman and Ms. Sullivan, have had their monies fully restored to them.

In his reasons for sentencing petitioner, Judge Neustadter found one aggravating factor, the need to deter petitioner and others from violating the law; and, seven mitigating factors. One of those mitigating factors was petitioner's intoxication which was substantial grounds tending to excuse or justify his conduct, though failing to establish a defense for the conduct. Judge Neustadter further noted:

> Considering the offense and the surrounding circumstances of it, his clear prior record, and alcohol problem, this recommended probationary sentence as conditioned should be adequate for purposes of punishment, as a deterrent, for rehabilitation, and so as not to deprecate the offense. He should be amenable to probation (R-3).

Petitioner has been diagnosed as a functional alcoholic suffering from alcohol dependency for several years with no underlying psychopathology. At least between 1985 and up until the incident of 1987, Joel Miller, Doctor of Psychology, described petitioner as a maintenance drinker; i.e., petitioner developed a certain level of tolerance (a six-pack of bear per day), to reach a level of equilibrium without becoming disfunctional.

Dr. Miller asserted that petitioner's consumption of alcohol on April 25 and 26, 1987, was excessive beyond petitioner's tolerance threshold which produced behavior out of character for him. Dr. Miller opined that under the circumstances, petitioner lacked the requisite mental capacity to commit the offense to which he was charged. Dr. Miller concluded that on April 26, 1987, petitioner was clearly pathologically intoxicated.

Prior to the entry of his guilty plea before Judge Neustadter, petitioner was admitted as an out-patient for treatment for alcohol abuse to Therapeutic Intervention Centers (T.I.C.) Atlantic City, New Jersey, on May 12, 1987. On October

20, 1987, subsequent to his guilty plea, petitioner was released following his successful completion of T.I.C.'s program. During this period, petitioner was attending meetings held by Alcoholics Anonymous (A.A.).

On November 25, 1987, petitioner was admitted to the Institute for Human Development (I.H.D.) to its Outpatient Alcohol Program. Petitioner was discharged from the program on September 30, 1988 where his rehabilitative status appeared to be good. Petitioner was discharged with instructions to continue active participation in A.A. Petitioner participated in A.A. until January 1989, when he discontinued attending meetings of the support group.

The parties stipulated on the record that in the event petitioner's Atlantic County Probation Officer, James Parent, were called to testify, Mr. Parent would testify to the following: (1) that James Parent was petitioner's probation officer during the period petitioner was on probation as a result of petitioner's criminal trespass conviction; (2) that petitioner was very cooperative; (3) that petitioner was released from his probationary term earlier than scheduled; (4) that petitioner successfully completed all of the conditions of his probation; including 50 hours of community service and full payment of the court imposed fine.

Bonnie Putterman, a victim of petitioner's criminal trespass, voluntarily testified on petitioner's behalf. Ms. Putterman, who is acquainted with rather than a friend of petitioner, is a former Atlantic County probation officer and now a student at Widner University Law School. She opined that, after investigating petitioner's behavior subsequent to the event of April 26, 1987, petitioner was rehabilitated and should not be denied licensure.

Gary Dean Thompson, Casino Cage Manager and Michael David Mullen, Assistant Casino Cage Manager at the Trump Plaza Casino/Hotel are supervisors of petitioner. Both men were made aware of petitioner's conviction by petitioner. Neither supervisor has observed nor detected petitioner under the influence of alcohol at anytime during their relationship with petitioner. Both supervisors commend petitioner's demeanor, behavior and performance on the job and characterize him as an exemplary employee with the best of good character, honesty and integrity. Petitioner has been encouraged by the two supervisors, as well as three other supervisors, to apply for a casino key license. Petitioner is under

consideration for promotion to the position of casino cage supervisor, for which a casino key license is required.

DISCUSSION AND CONCLUSIONS

I. N.J.S.A. 5:12-86c(1) as incorporated within section 86g of the Act.

Section 86c(1) of the Act mandates a casino license shall be denied to any person required to be qualified if that person has been convicted of any of the crimes enumerated thereunder in any jurisdiction. Section 86g provides that the Commission shall deny a casino license to any applicant for the "commission ... of 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 ..." Petitioner plead guilty to one count of an amended charge of Criminal Trespass, N.J.S.A. 2C:18-3a, a crime of the fourth degree. N.J.S.A. 2C:18-3 is not one of the enumerated disqualifying offenses listed in subsection c. of section 86 of the Act.

The Division contends that petitioner was arrested and indicted for the crimes of burglary, N.J.S.A. 2C:18-2, and theft by unlawful taking, N.J.S.A. 2C:20-3. Burglary is an offense incorporated into section 86c(1) of the Act as a disqualifying offense if it constitutes a crime of the second degree. Theft by unlawful taking is incorporated into section 86c(1) of the Act under theft and related offenses, and is a disqualifying offense whereby it constitutes a crime of the second or third degree. Petitioner was indicted for unlawfully taking of movable property (United States currency) valued at more than $500. N.J.S.A. 2C:20-3(a). Pursuant to N.J.S.A. 2C:20-2b(2)(a), theft constitutes a crime of the third degree if the amount involved exceeds $500.

Petitioner was not convicted of either of the offenses for which he was indicted. The Division asserts, however, that notwithstanding the absence of a conviction; under the provisions of Section 86g petitioner is disqualified from licensure despite the fact that petitioner's conduct was not prosecuted under criminal law. It contends that a theft occurred and, therefore, petitioner is automatically disqualified from holding a casino key license by virtue of the nature of the theft and the amount involved. The Division asserts that the defense of

rehabilitation is not available to petitioner under the licensing provisions of casino key employees (N.J.S.A. 5:12-89), but may be applied for the renewal of his casino employee license, pursuant to N.J.S.A. 5:12-90h.

Petitioner asserts that he does not recall the events of April 26, 1987, but concedes that he entered the apartment of another and took some money. He argues that he did not commit a theft as defined by the laws of this State, Moreover, he asserts, the Superior Court of New Jersey accepted his guilty plea to the lesser offense of Criminal Trespass, a fourth degree offense, rather than find him guilty of the offenses for which he was indicted; i.e., Burglary and Theft by Unlawful Taking. Petitioner argues that he did not plead guilty to either of the two offenses for which he was charged.

Petitioner observes that the honorable court found, as one of the mitigating factors in his favor, that his intoxication was substantial grounds which tended to excuse or justify his conduct. In consideration thereof, petitioner refers to the expert testimony of Dr. Miller who asserted that as a consequence of his excessive consumption of alcohol on April 25 and 26, 1987, petitioner lacked the requisite mental capacity to commit the offenses for which he was charged and indicted. Petitioner asserts that he did not possess the requisite mens rea, or mental culpability, to commit the offenses for which he is charged.

The statute, N.J.S.A. 2C:20-3a. Movable property, states that:

> A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

Petitioner contends that an essential element to prove that a person is guilty of an N.J.S.A. 2C:20-3a. offense is to demonstrate that the action was committed purposely. Purposely is defined at N.J.S.A. 2C:2-2b (1) as follows:

> A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or hopes that they exist.

> "With purpose," "designed," "with design" or equivalent terms have the same meaning.

Petitioner argues that the crime of theft is not committed unless the actor has, and the State proves, the mens rea.

Petitioner now looks to N.J.S.A. 2C:2-8, Intoxication and asserts there are two ways for a person who is intoxicated not to be found responsible for an act which would otherwise be criminal. One way is that if the intoxication of the person negatives an element of the offense. Petitioner argues that through Dr. Miller's expert testimony, the element of "purpose" has been negatived.

The other way for the intoxication to lead to the conclusion that a crime did not occur in the legal sense is where that intoxication is pathological. Under N.J.S.A. 2C:2-8 d., intoxication which is pathological is an affirmative defense,

> " ... if by reason of such intoxication the actor at the time of his conduct lacks substantial and adequate capacity either to appreciate its wrongfulness or to conform his conduct to the requirement of law."

Petitioner again relies upon Dr. Miller's expert testimony where he clearly concluded that petitioner suffered from pathological intoxication at the time petitioner took the property of another.

In consideration of all the above elements, petitioner contends that the Division has not proven its assertion that a theft occurred.

I **FIND** that a court of competent jurisdiction has determined that petitioner was neither guilty of Burglary (N.J.S.A. 2C:18-2) nor of Theft by Unlawful Taking (N.J.S.A. 2C:20-3). The Court specifically referenced petitioners intoxication as substantial grounds to excuse or justify petitioner's conduct. Having heard petitioner's credible testimony that he was unaware of his actions on April 26, 1987 due to his intoxication and his admission that he is an alcoholic, I **CONCLUDE** that petitioner lacked the necessary mens rea to commit the criminal offenses for which he was charged. See, In re Perrone, 5 N.J. 514, 522 (1950). I **CONCLUDE**, therefore, that petitioner did not commit a disqualifying offense pursuant to section 86c (1) as incorporated within section 86g of the Act.

II. N.J.S.A. 5:12-90h

Having found and concluded that petitioner did not commit a disqualifying offense as enumerated under section 86c (1) of the Act, I **FIND** and **CONCLUDE** there is no necessity to consider the rehabilitation factors as contained in N.J.S.A. 5:12-90h.

III. N.J.S.A. 5:12-89b (2) and as incorporated in Section 90b of the Act.

Pursuant to N.J.S.A. 5:12-89b (2) and as incorporated within section 90b of the Act, petitioner O'Neill is required to affirmatively establish his good character, honesty and integrity, by clear and convincing evidence, for licensure as a casino key employee and for the renewal of his casino employee license. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the applicant's and/or licensee's good character, honesty and integrity, it is incumbent upon the applicant/licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra, In the Matter of the Application for Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the applicant/licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, as a standard of proof, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that petitioner possesses the requisite good character, honesty and integrity. The standard requires more than mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (Law Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Bonnie Putterman, a victim of petitioner's criminal trespass, voluntarily testified on petitioner's behalf. Ms. Putterman asserted that she is not a friend of petitioner. She had contacted petitioner's probation officer and, as a former probation officer herself, Ms. Putterman was convinced that petitioner better than met the conditions of the court's sentencing. She saw no purpose in revoking petitioner's license nor any reason to block his advancement.

Gary Thompson, who has been employed in the casino industry for more than 20 years and is presently a Cage Manager at Trump Plaza, testified, among other things, that he has never questioned petitioner's honesty, integrity or character even though he was aware of the events and of petitioner's conduct on April 26, 1987. Mr. Thompson also asserted that petitioner's reputation among petitioner's peers is unparalleled and that everyone holds him high esteem. Mr. Thompson and four his his supervisory colleagues have recommended petitioner's promotion to the position of Cage Supervisor at Trump Plaza. Mr. Thompson asserted that petitioner not only was highly skilled and knows his job as a cashier and trainer of cashiers, but he also works well with people. Petitioner is a good teacher; i.e., very patient and thorough. Mr. Thompson has never observed petitioner under the influence of alcohol.

Michael Mullen, Assistant Cage Manager at Trump Plaza, similarly testified as to petitioner's good character, honesty and integrity. Mullen, who has known and worked with petitioner for more than five years, considers petitioner an exemplary employee in all respects. Petitioner has the respect of his coworkers who come to petitioner for advice and guidance in the performance of their duties because of his abilities and knowledge. Mullen, who is aware of the incident involving petitioner and the criminal trespass, has not changed his opinion with regards to petitioner's good character, honesty and integrity. Mr. Mullen also has not seen nor heard of petitioner's problems with alcohol until advised by petitioner.

I am persuaded that petitioner is now a recovering alcoholic who is aware of the harm, damage, injury and pain that may result if he ever again consumes alcoholic beverages. He has participated in counselling activities to recognize his problem. He has successfully abstained from drinking since his aberrant behavior on April 26, 1987.

Having carefully evaluated the evidence, I **FIND** and **CONCLUDE** that petitioner has met his burden, by clear and convincing evidence, and has demonstrated that he possesses the requisite good character, honesty and integrity for licensure as a casino key employee and for the renewal of his casino employee license.

I **CONCLUDE**, therefore, that the Division letters, dated August 2, 1988 and March 20, 1989 respectively, objecting to the issuance of a casino key employee license and to the renewal of a casino employee license issued to petitioner should be **DISMISSED**.

ORDER

Accordingly, it is hereby **ORDERED** that the Division's letters to petitioner's application for a casino key employee license and to revoke petitioners existing casino employee license be and are hereby **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

16 February 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

2/22/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 22 1990
DATE

Jacqueline LaVeglia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Bonnie Putterman
Gary Thompson
Michael Mullen
Dr. Joel Miller
Brian O'Neill

For the Respondent:

William Travers
Brian O'Neill

EXHIBIT LIST

For the Petitioner:

P-1 Letter
P-2 Discharge Summary
P-3 Outstanding service commendation
P-4 Employee evaluation
P-5 Curriculum vitae

For the Respondent:

R-1 Complaint
R-2 Indictment
R-3 Judgment of conviction

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-336
LICENSE NOS. 7-51; 114-95
OAL DOCKET NO. CCC 4041-89
ORDER NO. 90-17-18

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

Complainant,

v.

SIMONE PALERMO AND
SAVEMOR TRAVEL

Respondent.

AMENDED
ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of April 25, 1990,

IT IS on this 6TH day of June 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the junket representative license of Simone Palermo is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Simone Palermo 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 Savemor Travel and Simone Palermo are prohibited from conducting any business, directly or indirectly, with or supplying goods and services to any casino licensee or any person acting on behalf of a casino licensee until further order of the Commission; and

IT IS FURTHER ORDERED that any existing agreements between Savemor Travel and/or Simone Palermo and any casino licensee or person acting on behalf of a casino licensee be terminated.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4041-89

AGENCY DKT. NO. 89-336

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
SIMONE PALERMO,
and
SAVEMORE TRAVEL,
Respondent.

Richard Morrissey, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Wayne R. Rosenlicht, Esq., for respondent (Horn, Kaplan, Goldberg, Gorny and Daniels, attorneys)

Record Closed: December 18, 1989 Decided: March 1, 1990

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The New Jersey Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) alleging that respondent Simone Palermo committed acts which

disqualify him from holding a junket representative license and/or a junket enterprise license, pursuant to sections 86c (2) and 89b (2) of the Casino Control Act (Act). The Division, therefore, seeks a judgment to revoke respondent's junket representative license and junket enterprise license.

The Division filed its complaint with the Commission on April 21, 1989. Therein, the Division recommended that the Commission enter an order to immediately suspend the junket representative license and junket enterprise license of respondent pending the revocation hearing. On May 19, 1989, the Commission ordered, among other things, that the junket representative license held by respondent Simone J. Palermo be suspended pending final disposition of the complaint or until further order of the Commission. The Commission further prohibited Savemore Travel from conducting any business with any casino licensee and that any existing agreements between Savemore Travel and any casino license be terminated within fifteen (15) days of the date of the order.

On June 2, 1989, the Commission transmitted the matter to the Office of Administrative Law (OAL) 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 July 12, 1989, a prehearing conference was held at which, among other things, the matter was scheduled for hearing on July 19, 1989 on an expedited basis before Administrative Law Judge Richard Murphy. The matter was adjourned at respondent's request because respondent was unable to obtain a doctor to testify on his behalf on July 19, 1989. The matter was then rescheduled for hearing on September 19, 1989 and reassigned to the undersigned. The hearing was held on September 19, 1989, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The parties requested and were granted leave to submit post-hearing memoranda. Due to respondent's counsel's illness and hospitalization, an extension was granted which was received by the OAL on December 18, 1989. Application for extension to submit this initial decision has been granted.

ISSUES

The issues to be determined by this tribunal and as agreed upon by the parties at the prehearing conference, are these:

A. Whether respondent actually committed the offense of patronizing prostitutes as alleged? N.J.A.C. 2C:34-1e.

B. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c (2), because he is alleged to have committed a violation of N.J.S.A. 2C:34-1e?

C. Whether respondent possesses the requisite good character, honesty and integrity for casino employee key licensure, pursuant to N.J.S.A. 5:12-89b (2)?

UNCONTESTED FACT

The following facts are neither contested nor disputed and, therefore, are hereby adopted, by reference, as **FINDINGS OF FACT**:

Respondent Simone J. Palermo is a resident of the State of Connecticut, residing at 284 Citizens Avenue, Waterbury, Connecticut. Respondent Savemore Travel is a Sole Proprietorship owned by Simone J. Palermo, which is located at 14 Second Avenue, Waterbury, Connecticut. Respondent Simone J. Palermo currently holds a junket representative license no. 114-95. Respondent Savemore Travel currently holds a junket enterprise license no. 7-51.

On or about March 24, 1989, respondent Palermo was arrested by the New Jersey State Police (NJSP) in the Trump Plaza Hotel and Casino (Trump Plaza) and charged with Patronizing Prostitutes, contrary to N.J.S.A. 2C:34-1e. On June 6, 1989, respondent Palermo, who was represented by counsel, was found guilty of the charge by the Atlantic City Municipal Court which imposed a fine of $100, plus $25 in court costs, and a $30 penalty to the Violent Crimes Compensation Board (VCCB).

TESTIMONIAL EVIDENCE

JoAnne Cordy, of the New Jersey State Police assigned to the Division, testified that on March 24, 1989, she was on duty, undercover, at the Trump Plaza hotel and Casino between the hours of 9:00 p.m. and 5:00 a.m. She was dressed in civilian clothes working the prostitution detail. Trooper Cordy asserted that there was an influx of pimps and prostitutes in Atlantic City at that time of the year and she was assigned to work the lobby and lounge area of the hotel and casino and engage pimps or suspected pimps into conversations with her. Trooper Cordy

entered the lounge area and sat at the bar where she made eye contact with a black male who was suspected to be a pimp. He became the target of her undercover operation when she noticed respondent Palermo who waived at her from across the bar. Trooper Cordy nodded and smiled at respondent whereupon respondent approached the Trooper where she was sitting at the bar and engaged her in conversation. Trooper Cordy testified that respondent said, "You're working, I know you are," and introduced himself to her.

Trooper Cordy asserted that respondent was not alone. He asked her if she wanted to get rich, how much would she charge to take care of his two friends that were sitting on the other side of the bar. Respondent stated that if she wanted to get rich she was to charge them a lot of money because he wanted one percent of whatever they gave her. Respondent then introduced Ms. Cordy to one of the men. After a short conversation, respondent's male friend left.

During the conversation with respondent, Trooper Cordy testified that respondent touched her by rubbing the back of her neck and her back. Respondent is also alleged to have said to his male friend, "Isn't she beautiful? She's a very nice girl."

After respondent's friend walked away, Ms. Cordy testified that respondent said that it was okay, that he wanted Ms. Cordy for himself. She asserted that he then asked her if she would engage in sex with him for $300. The two got up from their seats and left the bar. They were holding hands as they walked into the lobby toward the hotel elevators. They passed a hotel security guard and before they reached the elevator, Trooper Cordy placed respondent under arrest. Respondent was immediately taken to the Division's office where he was advised of his Miranda rights and processed.

Dr. Evan J. Whalley, respondent's personal physician for more than 20 years, was qualified as an expert to offer various medical opinions. Dr. Whalley testified that he has treated respondent for, among other things, diabetes, a severe urinary tract infection, a duodenal ulcer and impotence. Dr. Whalley asserted that respondent's wife had complained to him about respondent's impotence and that there had been no sexual contact between the two for the past four years.

Dr. Whalley asserted that there were three medical reasons for respondent's impotence: First, that respondent had uncontrolled diabetes; two, that respondent had essential hypertension which was treated with a medication called Lopressor, which can cause impotence; and, third, he has severe balanitis.

Balanitis, as described by Dr. Whalley, is a condition in uncircumcised males in which repeated infections will cause an extremely tight ring to form around the edge of the prepuce, the foreskin. The ring is so tight that the individual cannot retract the foreskin even for the purpose of personal hygiene. Dr. Whalley opined, among other things, that it would have been absolutely impossible for respondent to engage in any form of sexual activity which would have required respondent to have an erection on March 24, 1989. Dr. Whalley testified that on May 15, 1989, respondent had a circumcision performed at the doctor's insistence to relieve the problems related to the balanitis. Dr. Whalley testified that there was no improvement of respondent's impotence subsequent to the surgery and, he further opined that the condition was probably permanent.

Respondent, who was 57 years of age at the time of hearing, testified on his own behalf. Respondent offered four letters into evidence for the purpose of establishing his good character, honesty and integrity (R-3,4,5,6). None of the four character letters addressed the charges brought against respondent nor the fact that he had been found guilty on those charges. Respondent testified that he did not explain to any of the authors of the letters the specifics of the Division's complaint but, rather, he told the authors that his junket license had been suspended and that he needed references as to his good character.

Respondent testified, among other things, that on March 24, 1989, he had brought a junket of approximately 28 people to the Trump Plaza. There came a time on that date when respondent entered into the lounge in the Trump Plaza where, among others, Trooper Cordy and two of respondent's male patrons were seated at the bar. The two male patrons of respondent's junket were identified as Mr. Richard Briggs and Mr. Anello. Respondent stood next to the two men while the three of them looked at Ms. Cordy who was seated at the bar across the room from them. Respondent could not recall the conversation of the three men, however, it was focused on Ms. Cordy and related to her being a pretty lady who was a hooker looking for business.

Respondent left the two men and approached Ms. Cordy where he engaged her in conversation. Respondent admitted that he was touching Ms. Cordy and that he had his hand on her back. Richard Briggs testified, among other things, that he subsequently approached respondent and Ms. Cordy as they sat at the bar and observed that respondent was showing Ms. Cordy a badge [1] and telling her that he, respondent, was a deputy sheriff. Mr. Briggs asserted to Ms. Cordy that he, Briggs, was respondent's assistant and that she should be placed under arrest. Mr. Briggs meant his comments to be a joke, however, Ms. Cordy appeared to be angry with Briggs' comments.

Respondent asserted that prior to approaching Ms. Cordy, he had attempted to alert Mr. Briggs and Mr. Anello that anyone in the business of prostitution presented a problem; specifically with AIDS[2]. He asserted to them that association with her would not be a good idea. Mr. Briggs testified that in his conversation with respondent and Ms. Cordy, he did not hear respondent attempt to arrange some sort of a deal with Ms. Cordy for her to have sex with Briggs or anyone else for an exchange of money. Briggs testified that at some time he might have said, "Say, that might be a hooker," referring to Ms. Cordy (TR 108).

Respondent contended that he approached Ms. Cody for the purpose of removing her from the area so that she would not have any effect on Mr. Briggs and/or Mr. Anello. He asserted that he told Ms. Cordy who he was (and showed her his honorary special deputy sheriff badge) and that was usually enough "to scare off a hooker." (TR 75). Respondent denies that he had any intention of attempting to solicit Ms. Cordy for sex for himself or either of his two male companions. Respondent admits, moreover, that he escorted Ms. Cordy out of the lounge. He insists that he was not holding hands with Ms. Cordy as they left the lounge. Rather, he asserts, that he was holding her arm as they left the lounge. Mr. Briggs testified that he observed respondent leave the lounge with Ms. Cordy and as the two walked by him, respondent turned around and waived at Briggs. The two walked towards the elevator of the hotel.

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1. Respondent testified earlier that he was an honorary specialty deputy sheriff and was issued a badge.
2. Acquired immunodeficiency syndrome.

Respondent contends that he was attempting to escort Ms. Cordy to the hotel security desk which was located between the lounge and the elevators in order to turn her into the security guard as a prostitute. However, before the two of them reached the security desk, respondent was placed under arrest by a state police sergeant and Trooper Cordy.

FINDINGS OF FACT

Having carefully reviewed and considered the entire record in this matter and having given fair weight thereto; and having observed the demeanor of the witnesses as they testified before me and having assessed their credibility, I **FIND** the following **FACTS**.

On the evening of March 24, 1989, Trooper JoAnne Cordy of the N.J.S.P. was on duty at Trump Plaza working undercover on the prostitution detail. At a time not disclosed on the record, Trooper Cordy entered a lounge in the hotel casino complex and was seated at its bar. Ms. Cordy was assigned the task of engaging pimps or suspected pimps in conversation for subsequent arrest. She had targeted a black male suspect and focused her attention on him. At the same time Ms. Cordy noticed respondent waive his hand at her from across the bar. She nodded her head and smiled at him. Respondent thereupon left the gentlemen he was with and approached Ms. Cordy where she was sitting. He engaged her in conversation by introducing himself and asserting that he knew that she was "working."

Respondent then asked the trooper if she wanted to get rich, how much would she charge to take care of his two friends. He advised her to charge a lot of money because he wanted one percent of whatever the amount they gave her. Respondent subsequently asked Ms. Cordy if she would engage in sex with him for $300.

There is no doubt that respondent and Trooper Cordy left the lounge together and walked towards the hotel elevator. Nor is there any doubt that respondent was touching Ms. Cordy as they both left the lounge. As respondent and Trooper Cordy left the lounge, respondent turned and waived to Mr. Briggs.

I **FIND** Dr. Evan Whalley's expert testimony to be entirely credible. However, I **FIND** respondent's testimony to be incredible and not to be believed. This is particularly so with respect to his assertion that he escorted Trooper Cordy out of the lounge to either encourage her to leave the premises of the hotel or, alternatively, to turn her in at the hotel security desk as a prostitute. It was he who left his male companions to engage Ms. Cordy in conversation, not they. Mr. Briggs subsequently arrived to engage Ms. Cordy in light conversation and left shortly thereafter without any discussion of a sexual encounter or proposal between Briggs and Ms. Cordy, respondent remained with Ms. Cordy. Respondent's fear for Mr. Briggs' safety and welfare evaporated, if in fact, he held such a concern. Mr. Anello did not even venture on the scene but, rather, remained apart from Ms. Cordy and respondent. Respondent could have remained with his companions on the other side of the bar away from Trooper Cordy. However, it was he who initiated contact with her, rather than his two male friends. It was also respondent who left the lounge alone with Ms. Cordy.

I also **FIND** respondent's assertions that the purpose of showing Trooper Cordy his honorary special deputy sheriff badge was to frighten her away from his two companions to be incredible. The event was of so little consequence to Ms. Cordy that she could only recall, on cross examination, that respondent may have told her that he was a special deputy. Mr. Briggs, on the other hand, considered the incident as a joke. It may be inferred, therefore, that respondent attempted to impress a lady of the night with his honorary special deputy badge, knowing full well that he exercised no official authority in this jurisdiction, or any other jurisdiction, for that matter. It was an act of braggadocio on the part of respondent.

Notwithstanding the credible testimony of Dr. Whalley, it is not necessary for a male to be potent to engage the services of a prostitute.

I **FIND** that respondent offered Trooper Cordy the sum of $300 for her to engage in sexual activity with him.

I **FIND**, therefore, that respondent Simone Palermo, did, in fact, commit the offense of patronizing prostitutes, in violation of N.J.S.A. 2C:34-1e.

DISCUSSION AND CONCLUSIONS

The N.J.S.A. 2C:34-1e Offense

Chapter 34 of the New Jersey Code of Criminal Justice is entitled Public Indecency. Incorporated therein is section 2C:34-1 dealing with prostitution and related offenses with subsection e. designated, Patronizing prostitutes. N.J.S.A. 2C:34-1e provides that:

> A person commits a petty disorderly persons offense if he hires a prostitute to engage in sexual activity with him, or if he enters or remains in a house of prostitution for the purpose in engaging in sexual activity or if he solicits or requests another person to engage in sexual activity with him for hire. (Emphasis supplied)

The Atlantic City Municipal Court, a court of competent jurisdiction, after a trial found and adjudged respondent guilty of the N.J.S.A. 2C:34-1e offense. After a review of all of the evidence, this tribunal also found that respondent had committed the offense as charged. Such an offense is not, however, a per se disqualifying offense under section 86c (1) of the Act.

Disqualifying Offense Under Section 86c (2) of the Act

The Division contends that as a consequence of respondent's conduct, his continued licensure is inimical to the policies of the Act. N.J.S.A. 5:12-86c (2) provides, in pertinent part, that:

> The Commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria
> ...
>
> (2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations
> ....

"Inimical" is defined as; "being adverse often by reason of hostility or malevolence" (Webster's Ninth New Collegiate Dictionary, Merriam-Webster, Inc. 1986); and "Not conducive; harmful; adverse; unfriendly, hostile; antagonistic" (The American

Heritage Dictionary of the English Language, Haughton, Mifflin Co., 1978). In Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 at 313, the Commission quoted from the case In the Matter of the Application of Resorts International Hotel, Inc. DKT. NO. 79-CL-1 (Commission decision February 26, 1979) where it held that the accepted analytical approach to subsection 86(c)(4) (now, section 86c (2)) is 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 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 (Resorts at 15).

The Commission in Davis continued to hold that rehabilitation under sections 90h and 91d does not apply to disqualification convictions under section 86c (2) (formerly 86c (4)). However, many of the factors of these two sections are to be considered within the inimical analysis. Those enumerated factors in section 90h, which apply to a claim of rehabilitation by a casino employee license applicant, are as follows:

> (1) The nature and duties of the position applied for;
> (2) The nature and seriousness of the offense or conduct;
> (3) The circumstances under which the offense or conduct occurred;
> (4) The date of the offense or conduct;
> (5) The age of the applicant when the offense or conduct was committed;
> (6) Whether the offense or conduct was an isolated or repeated incident;
> (7) Any social conditions which may have contributed to the offense or conduct;
> (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, respondent is the holder of a casino key employee license as a junket representative pursuant to section 102b, incorporating section 89 of the Act. Respondent's junket representative license is currently no. 114-95. Savemore Travel is a sole proprietorship owned by respondent which holds junket enterprise license no. 7-51, pursuant to section 102 of the Act. Respondent prays that he retain both licenses in order to continue in the business of conducting junkets from the State of Connecticut to the casinos in Atlantic City, New Jersey.

Second, while the offense of Patronizing Prostitutes is graded as a petty disorderly persons offense under the New Jersey Code of Criminal Justice (N.J.S.A. 2C:34-1e) it is, nonetheless, a serious offense. It is well established that most states, as New Jersey, have enacted laws to control and/or prohibit prostitution. The Congress of the United States likewise has enacted Federal statutes to control the transport of individuals across state lines for the purpose of engaging in sexual activities; i.e., the White Slave Traffic Act (Mann Act), 18 USCS § 2421; and the Travel Act, 18 USCS § 1952. These offenses may be prosecuted under 18 USCS § 1961 et seq., the Racketeer Influence Corruption Organization Act (RICO). See, U.S. v. McLaurin, 557 F. 2d 1064 (1977), rehrg. den. 562 F. 2d. 1257, cert. den. 434 U.S. 1020.

Once considered to be a victimless crime, prostitution today is alleged to be one of the major sources of income for organized crime. It is also alleged to be a source for the transmittal of a variety of social diseases, not the least among them is AIDS. With the potential for transmitting such a dreaded life threatening disease, prostitution is no longer considered a "victimless crime."

Third and fourth. Trooper Cordy of the N.J.S.P. was on prostitution detail the evening of March 24, 1989, attempting to engage pimps in conversation with her. Respondent interrupted Ms. Cordy's surveillance by introducing himself to her and identifying her as a "working girl" (prostitute). Respondent subsequently propositioned Trooper Cordy by asking her to engage in sexual activity with him for the sum of $300.

Fifth and Sixth. Respondent was 57 years of age at the time of the offense. There was no evidence to indicate that respondent had any prior arrests or convictions for patronizing prostitutes. Therefore, this was a single, isolated incident.

Seventh. There was no evidence produced to demonstrate that any social conditions contributed to the offense or respondent's conduct.

Eighth. Respondent produced no evidence concerning the factors contained in this subsection.

Having considered all the facts with respect to this issue, I **CONCLUDE** that the Division has carried its burden of proof to demonstrate that respondent's conduct of patronizing a prostitute in a casino while in the performance of a junket representative is inimical to the Act and to the gaming industry. I further **CONCLUDE** that such conduct is disqualifying, pursuant to N.J.S.A. 5:12-86c (2).

Good Character, Honesty and Integrity as Required by Section 89b (2) of the Act.

Pursuant to N.J.S.A. 5:12-89b (2), respondent is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra; In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, as a standard, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true;

i.e., that petitioner possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Respondent produced a series of four (4) letters addressed to "To Whom it May Concern" (R-3, 4, 5, 6). Each of the four authors attest to respondent's character, however, none of the authors address the issue of respondent's arrest and conviction for patronizing prostitutes. Respondent testified that none of the four individuals who wrote the letters on his behalf were with him on March 24, 1989. Respondent further testified that he did not tell any of the four individuals that he had been arrested for patronizing prostitutes, only that a situation had occurred where he needed character references showing what kind of a person he was. (TR 65, 66).

Considering all of the circumstances regarding this issue, I **CONCLUDE** that respondent has failed to meet his burden of proof. I further **CONCLUDE**, therefore, that respondent has failed to demonstrate that he possesses the requisite good character, honesty and integrity, by clear and convincing evidence.

Accordingly, I **CONCLUDE** that respondent is disqualified from continued licensure by virtue of his failure to establish his good character, honesty and integrity, as required by N.J.S.A. 5:12-89b (2).

ORDER

Accordingly, it is hereby **ORDERED** that the junket representative license and the junket enterprise license now held by respondent Simone J. Palermo be and are hereby **REVOKED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

1 March 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

3/6/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 6 1990
DATE

Jayne LaCivita
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Joanne Cordy, New Jersey State Trooper

For the Respondent:

Evan J. Whalley, M.D.
Richard Briggs
Simone Palermo

EXHIBIT LIST

For the Petitioner:

P-1 Unidentified
P-2 Transcript of June 6, 1989

For the Respondent:

R-1 CV of Dr. Whalley
R-2 Copy of Dr. Whalley's medical license
R-3 Letter from Arnold Pisciotto
R-4 Letter from Walter Kenny
R-5 Letter from Canio Guglielmo
R-6 Letter from Alphonse Peloni
R-7 Dr. Whalley's office file

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-304
LICENSE NO. 06102-22
OAL DOCKET NO. CCC 05152-89
ORDER NO. 90-16-5

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

Complainant,

v.

VINCENT PANZARELLA,

Respondent.

ORDER

A hearing 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; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of April 18, 1990,

IT IS on this 30th day of April 1990, ORDERED that the initial decision is modified as follows:

> to conclude that a review of the rehabilitative criteria of N.J.S.A. 5:12-90(h) indicates that the respondent's theft offense did not render his licensure inimical pursuant to N.J.S.A. 5:12-86(c)(2). See Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985). The respondent's remorse, together with the aberational nature of the incident and the fact that he has not committed any further offense since the commission of this offense 16 months ago adequately overcomes his relatively minor theft offense.

ORDER NO. 90-16-5

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

IT IS FURTHER ORDERED that the Commission's order of May 5, 1989, suspending the respondent's casino employee license is vacated.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5152-89
AGENCY DKT. NO. 89-304

STATE OF NEW JERSEY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
VINCENT PANZARELLA,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Vincent Panzarella, pro se

Record Closed: February 22, 1990 Decided: March 12, 1990

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. 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. A hearing was conducted on February 22, 1990, after which the record closed.

The questions presented are whether respondent can establish that he is a person of good character and that he has been rehabilitated. N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90h.

The facts are undisputed. On December 27, 1988, respondent was arrested and charged with theft by unlawful taking contrary to N.J.S.A. 2C:20-3. He was found guilty of this charge in the Atlantic City Municipal Court and was fined $25 and ordered to pay restitution in the amount of $5.35, the value of the item stolen. As a supervisor in the maintenance department at Caesar's, respondent took a promotional camera from a room where Caesar's stored such items to be given away to patrons.

Respondent was fired after the incident and he has been unemployed since that time. Respondent is 50 years old, married, and has never before been in any such trouble. He had no disciplinary record with any of his casino employers going back to 1979, when he began working in the industry. Respondent testified that when he entered the storeroom to check on an unrelated problem, he saw the many boxes of cameras which he knew were promotional items. Respondent took one without really thinking about it, although he now understands that this was wrong. Respondent testified that though he has been advised that letters of support from former supervisors and associates might help his cause, he is simply too ashamed of what he has done to ask anyone. This is the substance of the record.

Respondent recognizes his error and he has paid a substantial price for this deviation. He has been unemployed for fifteen months, and I believe has carried a sense of humiliation with him since the incident. At age 50, respondent has no prior criminal record, and has had no disciplinary problems in ten years as a casino employee.

Based on the foregoing, it is my conclusion that this incident was aberrational and that respondent is a person of good character and has shown his rehabilitation. It is **ORDERED** that respondent be permitted to retain his casino employee license.

This recommended decision may be adopted, 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 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 this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

3/12/90
DATE

SOLOMON A. METZGER, ALJ

Agency Receipt:

3/14/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 15 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

tp

EXHIBITS

On behalf of petitioner:

P-1 Complaint, State of New Jersey v. Vincent Panzarella dated January 19, 1989

On behalf of respondent:

None

WITNESSES

On behalf of petitioner:

None

On behalf of respondent:

Vincent Panzarella

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-396
APPLICATION NO. 074763-21
OAL DOCKET NO. CCC 3546-89
ORDER NO. 90-18-7

APPLICATION OF DONALD V. PARRY
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 May 2, 1990,

IT IS on this 9th day of May 1990, ORDERED that the initial decision is adopted; 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

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3546-89

AGENCY DKT. NO. 89-EA-396

APPLICATION OF
DONALD V. PARRY
FOR A CASINO
EMPLOYEE LICENSE,

Donald V. Parry, petitioner, pro se

Norma Stancil, Deputy Attorney General for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: December 18, 1989 Decided: March 21, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

Petitioner Donald V. Parry applied to the Casino Control Commission (Commission) for a casino employee gaming license. The Division of Gaming Enforcement (Division) objected to the issuance of the license by letter to the Commission filed on March 27, 1989. Petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A plenary hearing convened on December 18, 1989. The Commission granted an extension of the time within which to file an initial decision at the request of the undersigned.

There were two issues to be resolved at the hearing according to the prehearing conference order:

1. Whether petitioner possesses the requisite financial stability, integrity and responsibility for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(1) as incorporated by section 90b of the Casino Control Act?

2. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2)?

The Division introduced the evidence of Agent Rita Kazmierski who did a background investigation of petitioner. Apparently the petitioner obtained credit cards at various institutions and failed to complete payment, leaving a balance due, which in most cases was written off. The evidence may be summarized as follows:

Institution	Account Balance	Last Payment	Written Off
Equitable Bank/Visa	$ 4,143.84	Jan. 9, 1987	Yes
Dominion Bank/Visa	1,725.71	Jan. 1987	Yes
Sovran Bank/Visa	2,275.91	Apr. 1981	Yes
Signet Bank/Mastercard	2,778.20	unknown	No
Visa Card	955.02	unknown	No
Household Finance	3,944.25	Jan. 1988	No
FOMOCO Credit (auto lease - auto sold at auction)	8,036.46	unknown	No

In addition, there are outstanding federal tax liens from as far back as 1971 totaling more than $50,000.

The petitioner misconstrued the statute which makes the possession of financial stability, integrity and responsibility a requirement of casino employee licensure. N.J.S.A. 5:12-89b(1). He interpreted the statute to mean that applicants must demonstrate economic strength or purchasing power. Consequently, he emphasized the economic power and wealth of his former associates and his own prior economic strength. He said he was a "founder" of the health spa industry. He also alleged a personal worth of over $6 million at one time.

Persons who vouched for the petitioner include the Senior Vice President of United Air Lines Employees' Credit Union; the Sales Director of P.P.G. Industries (formerly Pittsburg Plate Glass); the Executive Vice President of the New Business Furniture Corporation; the President of Rice-Medly Enterprises, Inc. (who is also,

according to the petitioner, the President of the Mormon Church in Salt Lake City, Utah); William F. Hubner, who is the founder, majority stockholder and Chairman of 21 health spas and Chairman and controlling stockholder in 69 other health spas; and Justice John P. Flaherty of the Pennsylvania Supreme Court. The petitioner formerly did business or was a partner of his vouchers except in the case of Flaherty, who represented him. They uniformly recommended petitioner in their letters. After questioning by the Division by telephone however, they discreetly distanced themselves a little, which is not unusual when a law enforcement agent makes an inquiry.

Petitioner defended his defaults in four ways.

He hastened to explain that the credit cards were all unsolicited.

His second defense was that the defaults occurred because he "stepped down" from his business and became a silent partner. His successors did not pay these debts as they promised, but instead "milked" the business dry.

Third, he argued that all persons seek to avoid taxes because there is no quid pro quo for them. He argued that he has certainly paid his fair share of taxes in his time (he paid well over $200,000 in taxes in 1971 alone); and in any case he has a $25 per month reimbursement agreement with the Internal Revenue Service covering recent years of tax liability. Additionally, he said that the majority of his tax liability is so old that the government is no longer pursuing it.

Finally, he argued that the amount of debt he left behind compared to the amount of debt he paid off over his business career is practically insignificant and a sign of his business integrity rather than a mark against it.

The petitioner is paying some of this debt now. He is presently reducing his debt with Household Finance. He says that he intends to pay all of his indebtedness as things improve financially for him. He is presently employed as a night auditor for a Brigantine hotel and obviously no longer wealthy.

With some prompting, the petitioner gave a short history of his rise and fall in American business. His initial wealth came as a result of his entry into the health spa

business just as it became popular. His fall began when he became over extended in the early 1970's with simultaneous major projects in Philadelphia, New York and the Bahamas.

Thereafter petitioner had interests in restaurants and ever smaller health spas until a salon in Baltimore went out of business with his name on the credit cards. He has been employed by others ever since.

A person can be without wealth or power and still meet the financial requirements of N.J.S.A. 5:12-89b(1). The Commission has always emphasized financial responsibility when it reviewed the applications of casino employees. Does the individual pay his just debts no matter how modest his life style? This is one of the criteria by which individuals are judged. They are not judged by the amount of wealth and power they control now or have controlled in the past. This is totally irrelevant to an employee licensing proceeding.

In addition, while there is something to be said for petitioners arguments, they were stated by him in the most arrogant and outrageous fashion. Had petitioner been represented, his representative would have emphasized his tax repayment and de-emphasized the petitioners libertarian arguments respecting taxation. The representative would have emphasized that petitioner is paying his debts according to his ability, one at a time, and de-emphasized petitioners argument that the credit cards were unsolicited.

Petitioner unaccountably walked out of the hearing during final summation having become disenchanted with the proceeding. He insisted at the end that if a "Supreme Court Justice and two guys worth over $100 million could not convince us that he was a decent person, he wouldn't even try."

Donald V. Parry may possesses the requisite character and financial stability for casino employee licensure but he did not demonstrate that he does so in this hearing.

The burden of proof on these issues is with the petitioner or applicant and requires proof by clear and convincing evidence. N.J.S.A. 5:12-89b (1) and (2). The "clear and convincing" standard of proof is less than the criminal standard of proof

"beyond a reasonable doubt," but more than the civil standard of proof by a "preponderance of the evidence." In re: Bally's, 10 N.J.A.R. 356; In re: Boardwalk Regency, 10 N.J.A.R. 295; In re: Resorts, 10 N.J.A.R. 244.

I therefore **CONCLUDE** that the petitioner has failed to demonstrate by clear and convincing evidence that he possesses the requisite financial stability, integrity and responsibility for casino employee licensure pursuant to N.J.S.A. 5:12-89b (1) and 90b.

I further **CONCLUDE** that the petitioner has failed to demonstrate by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b (2) and 90b.

ORDER

It is hereby **ORDERED** that the application filed herein by Donald V. Parry for casino licensure be and is hereby **DENIED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

March 21, 1990
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

3/26/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 26 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Donald V. Parry

For the Respondent:

Agent Rita Kazmierski
Donald V. Parry

EXHIBIT LIST

For the Petitioner:

P-1 Letter
P-2 Professional experience history
P-3 Letter
P-4 Letter
P-5 Letter
P-6 Letter
P-7 Letter and personal business history
P-8 Letter
P-9 Installment agreement
P-10 Copy of check
P-11 Receipts

For the Respondent:

R-1 Updated credit profile
R-2 Updated credit profile
R-3 Credit Information
R-4 Credit charge-off
R-5 Credit information
R-6 Credit information
R-7 Credit information
R-8 Credit information
R-9 Credit information
R-10 Tax lien
R-11 Tax lien
R-12 Tax lien
R-13 Personal History Disclosure Form

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-410
LICENSE NO. 51103-21
OAL DOCKET NO. CCC 4423-89
ORDER NO. 90-22-2

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF DAVID C. PRUCHNIC

ORDER

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of May 30, 1990,

IT IS on this 20th day of June 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application of David C. Pruchnic is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /kmm
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4423-89
AGENCY DKT. NO. 89-EA-410

DAVID C. PRUCHNIC,
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Mark E. Roddy, Esq., for petitioner (Goldenberg, Mackler and Sayegh, attorneys)

Ralph L. Fusco, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: December 7, 1989 Decided: April 16, 1990

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

STATEMENT OF THE CASE

This matter concerns the application of David C. Pruchnic (petitioner) for renewal of his casino employee license, which permits his employment in a licensed casino as a craps and blackjack dealer. By letter report to the Casino Control Commission dated March 30, 1989, the Division of Gaming Enforcement objected to renewal of the petitioner's licensure, based upon his February 22, 1988 conviction on a plea of guilty to the offense of distribution of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-5b(10). These are the issues:

1. Has the petitioner been convicted of distribution of a controlled dangerous substance in the second degree, contrary to N.J.S.A. 2C:35-5b(10), which would be a disqualifier from licensure pursuant to sections 86c(1) and 90e of the Casino Control Act (N.J.S.A. 5:12-1 et seq.)?

2. Does the petitioner possess the requisite good character, honesty and integrity for casino employee licensure, pursuant to sections 89b(2) and 90b of the Act?

3. Has the petitioner, if he has been convicted of an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to section 90h of the Act?

PROCEDURAL HISTORY

On May 31, 1989, the Casino Control Commission received the petitioner's request for a hearing concerning his license renewal application. On June 16, 1989, 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. On August 21, 1989, a prehearing conference was conducted. The hearing was thereafter held as scheduled on December 7, 1989, in Atlantic City, New Jersey. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The petitioner is 31 years old and he resides with his wife in Brigantine, New Jersey. He holds casino employee license number 51103-21, under which he is qualified to deal craps and blackjack. The petitioner was employed by Resorts International Hotel and Casino in Atlantic City from April 1984 until September 1987.

On September 29, 1987, the petitioner was arrested in his home following his sale of a large quantity of marijuana to an undercover detective. According to the Brigantine Police Department supplementary investigation report (Exhibit R-1), undercover marijuana purchases at the petitioner's residence in Brigantine began on September 17, 1987. The petitioner testified at the hearing that he met the man who turned out to be an undercover detective approximately two weeks before the

arrest, when he was introduced by a friend. The petitioner discussed selling marijuana with the newcomer and then sold him two ounces of marijuana for $250. According to the petitioner, he had been selling marijuana for only a couple of months, and he was selling only small amounts. He used a balance scale to weigh out the marijuana he was selling.

It was the petitioner's testimony that his new acquaintance asked him if he could sell larger amounts of marijuana. The man told the petitioner that he was interested in buying ten pounds. According to the petitioner's testimony, he had never tried to sell that much before and he told the new customer that he would look into it. The petitioner testified candidly that he was experiencing financial problems and after thinking it over, he reached the wrong decision.

The petitioner made some calls to his supplier and approximately 11 pounds of marijuana were delivered to him. He received the marijuana on consignment and would have to pay for it when it was sold. According to the petitioner, he was told he would have to pay about $1,000 per pound, so he decided he would sell it for $1,200 per pound. That price was agreeable to his customer.

The petitioner stated that he used zip lock bags to hold the marijuana in one-half pound portions. He took one of the half pound bags and divided its contents into smaller bags which he was going to sell for $35 each. When asked at the hearing about his wife's reaction to his involvement with drugs, the petitioner stated that she more or less told him he should not smoke marijuana. He said that he had not been selling the marijuana for very long, so he did not remember her specifically saying that he should not sell it. In any event, the petitioner testified that he had a lot of bills piling up and he was enticed to make some quick money by selling ten pounds of marijuana to his new customer.

After the petitioner made the sale of marijuana to the undercover officer on September 29, 1987, an Atlantic County narcotics task force surveillance team entered the petitioner's home to execute a search warrant. Approximately 13 pounds of marijuana were found, as well as assorted drug paraphernalia including scales and cutting and bagging equipment (Exhibits R-1, R-2 and R-3). Undercover investigator Joseph Zavaglia placed the petitioner under arrest and read him his Miranda warning. The petitioner's wife called from a local bar while the task force

was still at the petitioner's home. She was told to come into the Brigantine Police Department, where she was also placed under arrest. The petitioner was charged with the sale of marijuana over five pounds, in violation of N.J.S.A. 2C:35-5b(10); possession of over five pounds of marijuana with intent to distribute, in violation of N.J.S.A. 2C:35-5b(10); possession of over 50 grams of marijuana, in violation of N.J.S.A. 2C:35-10a(3); and possession of drug paraphernalia, in violation of N.J.S.A. 2C:36-2. Bail was set at $10,000 cash and the petitioner was held in the county jail.

The petitioner testified that he cooperated with the police. When he was arrested, he showed the task force officers who were searching his home where to look for everything. However, he could not recall if he ever gave a signed statement to the police. In addition, when he was asked who his supplier was, he would not tell them. Since the marijuana was confiscated without the supplier having been paid for it, the petitioner is sure the supplier was not happy.

On November 19, 1987, an indictment against the petitioner was filed in the New Jersey Superior Court for Atlantic County. He was charged with a fourth degree possession of marijuana offense and a third degree possession of a controlled dangerous substance offense, in violation of N.J.S.A. 2C:35-10a(3) and (1). He was also charged with two counts of conspiracy, in violation of N.J.S.A. 2C:5-2; two counts of distributing or possessing with intent to distribute marijuana in the third degree, in violation of N.J.S.A. 2C:35-5b(11); and two counts of distributing or possessing with intent to distribute over five pounds of marijuana, second degree offenses in violation of N.J.S.A. 2C:35-5b(10). On February 22, 1988, the petitioner retracted his original plea of not guilty and entered a plea of guilty to count six of the indictment, which charged him with the second degree offense of distribution of over five pounds of marijuana in violation of N.J.S.A. 2C:35-5b(10). The remaining counts of the indictment were dismissed (Exhibit R-5).

On March 18, 1988, the petitioner was sentenced to five years incarceration. He was ordered to pay a drug enforcement and demand reduction penalty of $2,000 and a fine of $2,000. The petitioner was also ordered to make restitution in the amount of $250 and pay a lab fee of $50. A Violent Crimes Compensation Board penalty of $30 was imposed and the petitioner's driving privilege was revoked for two years. Superior Court Judge Arthur V. Guerrera offered the following statement of reasons for the petitioner's sentence:

> This was a negotiated plea agreement, and it appears to be fair to both the state and the defendant. Therefore this court agrees with the plea and will impose the recommended sentence. Although this is the defendant's first conviction, the presumption of no incarceration should not apply for the following reasons:
>
> This defendant is involved in organized criminal activity as can be seen by the quantity and ease this defendant was able to facilitate the distribution of CDS. Clearly, incarceration is necessary to deter this type conduct and protect the interest of the public. This interest clearly outweighs the presumption of no incarceration.

According to the petitioner, he spent about 18 days in the county jail after sentencing, then he was sent to Trenton State Prison. Eventually, he was held at the Jones Prison Farm. After about one month, the petitioner applied for admission to the intensive supervision program. He did this even though other inmates tried to dissuade him, saying that release into the program was a set-up and that he would be back in prison with a longer sentence. In particular, the other inmates complained about the many drug tests required under the program. However, the petitioner testified that he had decided after his arrest that he would no longer be involved with drugs because they had "messed up" his life. Remaining drug free was already his intention anyway.

The petitioner was interviewed for admission into the program. A two-judge panel described the strict rules which he would have to follow and let him know that even if he did not go into the program, he could be released on parole after five more months, and the parole requirements would be much less stringent. Notwithstanding this information, the petitioner stated that he did not hesitate to enter the intensive supervision program. He put together a community network team, including a leader and employer who would sponsor him. He was released into the program after about six and one-half months incarceration.

Under the program, the petitioner was required to obtain employment and to make payments on his fines. He was also required to make a budget, keep a diary, and to attend narcotics anonymous once a week. According to the petitioner, he was eager to work and to pay his fines, and he did not consider the program requirements to be a hardship. The petitioner mowed grass for two weeks and then he worked at a pizza restaurant. He scheduled his payments of the $4,800 in fines and penalties which he owed so that he could pay it off in 12 months.

The petitioner testified that he held various restaurant and cooking jobs since he was 13 years old. He had worked his way through Penn State University by cooking. The petitioner noted that he is only nine credits short of obtaining his college degree. In any event, the Trump Plaza Casino Hotel hired him as a cook with full knowledge of his participation in the intensive supervision program. He held that position from November 1988 until May 1989. At the time of the hearing, the petitioner held three part-time jobs in the casino industry. He works as a banquet food server at Trump Plaza and Trump Castle, and he works as a dealer at Harrah's Casino. As a result of these jobs, the petitioner has been able to pay his fines and penalties in full.

The petitioner testified sincerely that he and his wife experienced problems before he went to jail and they were separated. His incarceration had made matters worse. However, following his release into the intensive supervision program, the petitioner was able to reconcile with his wife. His nearly seven months in jail had helped him realize that his drug involvement had been wrong and that it had jeopardized his health and his marriage. Because the petitioner had been obeying all of the rules of the intensive supervision program, he was not required to attend a 90-day program review. He attended a mandatory 180-day review and was encouraged when the supervising judges congratulated him on his efforts.

The petitioner testified that he underwent approximately six random drug tests per month. He had experienced about 60 tests so far and they all had been fine. As he advanced in the program, the restrictions eased and he was no longer required to keep a budget or a diary. With continued satisfactory participation, the petitioner was to receive his release from the program in February 1990. The petitioner testified credibly that he has no doubt that he can remain law abiding. It is important to him to keep his license. He enjoys his work and he is able to pay his bills.

James Ney, an employee of the Administrative Office of the Courts, testified concerning the intensive supervision program. He said that it is an intensive parole program designed to alleviate prison overcrowding. An inmate who applies must provide a plan which includes a residence and a community sponsor. There must be a community network team for moral support. In addition, drug treatment and employment services must be identified. Only about 20 percent of the applicants are accepted into the program.

Mr. Ney testified that he spoke with the petitioner's supervising officer, James Salvaryn. Mr. Salvaryn told him that the petitioner had only one minor curfew violation and otherwise was in full compliance with the program. All of his fines and penalties were paid in full and the petitioner was attending narcotics anonymous meetings as required. In addition, the petitioner had performed community service. A letter from Mr. Salvaryn was admitted into evidence as part of Exhibit P-1. According to the letter, the petitioner was required to complete 211 hours of community service. This was performed by cleaning a V.F.W. post facility. The petitioner not only satisfied the requirement but actually completed a total of 262 hours. Mr. Salvaryn offered the following evaluation of the petitioner:

> In my 10 years in the field of supervision through ISP and previously Atlantic County probation, I have come to realize that certain people will conform to the rules of a program for the sake of merely getting through a program and some actually benefit from the experience. Judging by Mr. Pruchnic's motivation, maturity and effort, I feel he has benefited from his time in prison and on ISP. In numerous conversations, Mr. Pruchnic has shown an understanding of the shortcomings of his prior criminal activity and seems to have the proper motivation, as well as the skills to achieve his goal of some day being a successful restaurateur. Throughout his time on ISP, David has shown proof of rehabilitation. His desire to learn while working as a cook at Trump Plaza, his getting a part time job to supplement his income and ultimately his getting a job dealing craps to maximize his income (so he could some day realize his goal), show a sincere desire to be a success in a pro-social, legal way.

Numerous letters from the petitioner's family, friends, acquaintances, and employers, were admitted into evidence as Exhibit P-1. Some of the letters are from coworkers and supervisors in the casino industry. Most of the letters indicate an awareness on the writer's part concerning the petitioner's criminal conduct and subsequent rehabilitation efforts. These letters describe the petitioner as a hard working and caring person, and many writers express great surprise that the petitioner became involved in any kind of illegal activity. It is apparent from reading these letters that these writers care a great deal about the petitioner and that they are convinced he has learned a painful lesson and will now be a productive and respected citizen. Many emphasize that the petitioner is a very trustworthy and conscientious person.

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. It is the intention of the Act to preclude the creation of any property right in any license permitted under the act and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. 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 good character, honesty and integrity.

The Act also sets forth grounds for disqualification. Section 90e incorporates the disqualification criteria set forth in section 86 of the Act. Pursuant to section 86c(1), the Casino Control Commission shall deny a casino employee license to any applicant who has been convicted of an offense specifically identified as a disqualifier from licensure. Among these offenses are the second or third degree crimes of distributing a controlled dangerous substance, in violation of N.J.S.A. 2C:35-5.

It is undisputed that on September 29, 1987, the petitioner sold ten pounds of marijuana to an undercover investigator. On February 22, 1988, the petitioner was convicted upon his plea of guilty to one count of distribution of marijuana in a quantity of five pounds or more, a second degree crime in violation of N.J.S.A. 2C:35-5b(10). Therefore, I **CONCLUDE** that the petitioner is subject to denial of his application for renewal of his casino employee license on the basis of his conviction of a disqualifying offense.

Section 90h of the Act provides that the petitioner shall not be denied a casino employee license on the basis of his otherwise disqualifying conviction, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h shall be considered:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

The petitioner holds three part-time positions in the casino industry. He is a dealer at one licensed casino and he works as a food service employee in two others. Renewal of licensure would permit him to continue working as a dealer on the casino floor. The petitioner previously worked for over three years at Resorts International Hotel and Casino. He lost his position there when he was arrested on September 29, 1987, following his sale of ten pounds of marijuana to an undercover investigator.

The petitioner was 29 at the time of his arrest. He had been selling marijuana in small quantities for about two months. When the undercover detective suggested buying a large quantity of marijuana, the petitioner saw the proposition as a way to make some quick money to pay some bills.

After his arrest, the petitioner took stock of his conduct and realized his drug involvement was a foolish mistake. It had jeopardized his own health and safety and had nearly destroyed his marriage. Although the petitioner was sentenced to incarceration for five years, he applied for and was admitted into the intensive supervision program. It is undisputed that the petitioner has met the requirements of the program.

The petitioner has maintained employment following his release from prison. He met the schedule for payment of his fines and penalties and these sums have been paid in full. The petitioner has also undergone about 60 random drug tests, all of which he passed without incident. In the opinion of his supervising officer, the petitioner has shown the motivation, maturity and effort to actually benefit from the intensive supervision experience.

There is no doubt that he was convicted of a serious offense. Although it was his first offense, the sentencing judge determined that incarceration was warranted. The consequences of his arrest, conviction and incarceration were more than adequate to persuade the petitioner that he had made a serious mistake. He has worked very hard to regain the respect and trust of his family, friends and employers. He has accomplished this difficult task and is considered by those who know him to be a trustworthy and conscientious man.

The petitioner has offered substantial evidence to demonstrate that the possibility of his again becoming involved in illegal activity is exceedingly remote. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner, who has been convicted of a disqualifying offense under section 86c(1) of the Act, has established his rehabilitation by clear and convincing evidence, within the meaning of section 90h of the Act. I also **CONCLUDE** on the basis of the undisputed facts in this matter that the petitioner has sustained his burden of establishing by clear and convincing evidence that he presently possesses the good character, honesty and integrity required for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Act. Therefore, I **CONCLUDE** that the petitioner's application for renewal of his casino employee license should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of David C. Pruchnic for renewal of licensure as a casino employee be **GRANTED.**

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 16, 1990
DATE

Joseph F Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

4/18/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 18 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

For petitioner:

P-1 Packet of letters (approximately 67)

For respondent:

R-1 Brigantine Police Department supplementary investigation report, dated September 30, 1987

R-2 Request for examination of evidence

R-3 Laboratory report

R-4 Criminal complaint

R-5 Report of conviction and order for commitment, dated March 22, 1988

WITNESSES

For petitioner:

David C. Pruchnic
James Ney

For respondent:

David C. Pruchnic
Joanne M. Pruchnic

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-386
OAL DOCKET NO. CCC 6177-88
ORDER NO. 89-49-15

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

Complainant,

v.

ORDER

RESORTS INTERNATIONAL HOTEL, INC.
t/a RESORTS INTERNATIONAL CASINO HOTEL

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge, incorporating the Stipulation of Facts and Settlement Agreement, having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of December 13, 1989;

IT IS on this 23rd day of April 1990, ORDERED that the initial decision-settlement is adopted by the Commission; and

IT IS FURTHER ORDERED that Resorts International Hotel, Inc. t/a Resorts International Casino Hotel pay a monetary penalty in the amount of $102,500; $40,000 for its admitted violations of N.J.A.C. 19:45-1.27 (a)(2), -1.27(c)(1), -1.27(c)(4), -1.27(g) and -1.27(f); $60,000 for its admitted violations of N.J.A.C. 19:45-1.27(a) and -1.27(f); and $2,500 for its admitted violations of N.J.S.A. 5:12-96(e).

This penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 6177-88
AGENCY DKT. NO. 88-386

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
RESORTS INTERNATIONAL HOTEL
INC., T/A RESORTS INTERNATIONAL
CASINO/HOTEL,
Respondent.

Kevin F. O'Toole, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Jack Gorney, Esq., for respondent (Horn, Kaplan, Goldberg, Gorney & Daniels, attorneys)

Record Closed: October 17, 1989 **Decided: November 9, 1989**

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL ASPECTS

On June 3, 1988, the Division of Gaming Enforcement (Division) filed a four count complaint with the Casino Control Commission (Commission) alleging various violations of N.J.A.C. 19:45-1.1 et. seq. by respondent Resorts International Hotel, Inc., t/a Resorts International Casino/Hotel (Resorts). The Division alleges, among other things, that the violations pertain to the approval of a casino credit account for a Richard Hartman on September 19, 1987, and subsequent credit limit increases approved on October 1, 1987, and October 7, 1987 respectively, and in violation of the controlling regulations.

On August 15, 1988, the matter was transmitted to the Office of Administrative Law (OAL) 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. Prehearing conferences were held on November 3, 1988 and January 26, 1989. The matter was assigned to be heard by Stephen W. Thompson, ALJ, on April 24, 1989. That hearing date was adjourned and new hearing dates of May 19, 1989 and May 30, 1989 were set down and also adjourned. ALJ Thompson left the OAL and the matter was transferred to the undersigned.

Subsequent to the filing of cross-motions for summary decision, among other things, the parties entered into settlement negotiations. On October 17, 1989, the undersigned was in receipt of a Stipulation of Facts and Settlement Agreement duly executed by the parties, which is set forth hereinbelow:

STIPULATION OF FACT AND SETTLEMENT AGREEMENT

1. Respondent, Resorts International Hotel, Inc. t/a Resorts International Casino/Hotel (hereinafter "Resorts"), is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at times referenced herein has had its principal place of business

located at North Carolina and the Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Resorts is the holder of, and operates pursuant to, a Certificate of Operation effective May 26, 1978 at which time Resorts was the holder of temporary casino permit. Resorts has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date including all times referenced herein. Said Certification of Operation entitles Resorts to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

3. Resorts is now the holder of a plenary casino license issued to it by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to Resorts effective February 26, 1979, and was last renewed for a term of two years on or about February 26, 1988.

4. At the time of its last license renewal, Resorts had been conducting its casino hotel operations under the ownership and control of M.r Donald J. Trump. Mr. Trump had purchased Resorts from the Estate of Mr. James M. Crosby on or about July 21, 987.

5. On November 15, 1988, Resorts was acquired from Mr. Donald J. Trump by the Griffin Company. The Griffin Company is an entity which is wholly-owned by Mr. Merv Griffin.

6. On June 3, 1988, the Division filed with the Commission the complaint in the above-captioned matter. Said complaint alleges various violation s of N.J.A.C. 19:45-1.1 et seq. against Resorts which pertain to the approval of a casino credit account for Richard Hartman on September 19, 1987, and subsequent credit limit increases approved on October 1, 1987, and October 7, 1987, respectively.

7. Richard Hartman had initially established a casino credit account at Resorts on or about April 12, 1983. As of November 23, 1983, Richard Hartman's outstanding credit owing to Resorts consisted of a $200,000 counter check executed by Mr. Hartman on that date.

8. On January 10, 1984, Resorts was notified by a representative of Richard Hartman that Mr. Hartman had placed a stop payment against his outstanding counter check at Resorts. On January 18, 1984, Resorts deposited Mr. Hartman's outstanding counter check and on January 30, 1984, said counter check was returned unpaid for the reason "payment stopped."

9. On or about August 8, 1984, Richard Hartman paid $70,000, or 35% of the amount owed, to Resorts in full settlement of his $200,000 casino credit debt. The unpaid balance of $130,000 was written -off by Resorts for the quarter ending September 30, 1984.

10. On or about September 10, 1987, Richard Hartman had a telephone conversation with Jeff Ross, then Resorts' Vice President of Casino Operations, regarding the establishment of a casino credit account at Resorts.

11. Based on the telephone conversation described in paragraph 10, supra, Mr. Ross requested Gary Grant, Resorts' Vice President of Credit Operations, to begin gathering information to prepare a credit file for Mr. Hartman. A copy of Richard Hartman's complete 1987 credit file, consisting of 24 pages, is attached hereto as Exhibit 1.

12. On September 10, 1987, Resorts Credit Department personnel began gathering information regarding Mr. Hartman's bank, casino credit and other non-casino credit data. The information thus obtained by the Resorts Credit Department personnel is set forth at paragraphs 13 through 25 of this Stipulation, infra.

13. On September 10, 1987, at 9:58 p.m. (E.S.T.) Resorts Credit Department obtained information from an approved casino credit bureau, Central Credit of Las Vegas (hereinafter "CCLV"), regarding Richard Hartman's credit limits and outstanding balances at other Atlantic City casinos. The information obtained from CCLV was contained on a document entitled "Central Credit Gaming Report," a copy of which is found at page 13 of Exhibit 1.

14. The Central Credit Gaming Report described in paragraph 13, supra, disclosed that Richard Hartman established casino credit and front money accounts

at various Atlantic City casinos commencing in or about September 1980. A summary of the Central Gaming Report disclosed the following information from the following casinos:

Caesars Boardwalk Regency	Credit established 9/28/80; no credit as of inquiry on 2/21/87; $200,000 payment stopped, 1/28/84; write-off 12/1/84, $60,000; balance 9/7/87, $60,000.
Bally's Park Place	Credit established 8/23/81; high action 9/10/83, $667,500; last action 10/10/83, $100,000; $100,000 account closed 2/13/84; settled 10/6/84; paid 2/21/86; $15,000 write-off, 8/6/87; balance 9/6/87, $15,000.
Atlantis	Front money established 3/12/82, inactive, 8/6/87; no account 3/27/87.
Sands N.J.	Credit established 9/11/82; current limit $200,000 as of 8/17/87; $200,000 payment stopped, 1/24/84; paid 2/26/86; per CCLV inquiry 9/7/87 no information released because patron "preferred."
Golden Nugget N.J.	Credit established 3/2/83; high and last action, 8/29/83, $100,000; $100,000 payment stopped 1/15/84; paid 2/19/86; per CCLV inquiry 9/7/87 no information released because patron "preferred."
Resorts	Credit established 4/12/83; no credit as of 8/17/87; $200,000 payment stopped 2/27/84; $130,000 write-off, 9/28/84; paid clear 9/7/87.
Harrah's Marina	Account established 4/6/84; $300,000 credit limit as of inquiry on 8/31/87, high and last action 8/25/87, $300,000; per CCLV inquiry 9/7/87 no information released because patron "preferred."
Trump Casino/Hotel	Account established 12/9/86; current $1,000,000 limit; high and last action 9/7/87, $500,000; current balance $500,000 from 9/7/87.

15. The Central Credit Gaming Report described in paragraphs 13 and 14, supra, also disclosed the following information regarding a bank account maintained by Richard Hartman at Irving Trust:

Account Number: 1010000676

Type of Account:	Business regular
Average Balance:	Medium 5, low 6
Current Balance:	Not available
Age of Account:	Opened 6 years
Excellent customer	

The Central Credit Gaming Report further disclosed that CCLV had obtained the information from the Sands on October 30, 1986.

16. On September 10, 1987, between 10:10 p.m. and 10:35 p.m., the Credit Department of Resorts also obtained casino credit information regarding Richard Hartman by directly contacting other casino licensees in Atlantic City. The casinos contacted and the information obtained and recorded by then Resorts Credit Clerk Supervisor and former employee Debra Innis included the following:

Atlantic City Casino	Time Information Obtained	Information Obtained and Recorded
Sands	10:10 p.m.	current $400,000 credit limit; $400,000 outstanding balance from 9/7/87; deroge $200,000 payment stopped 1/84.
Bally	10:12 p.m.	currently inactive; deroge $115,000 settlement 10/84.
Golden Nugget	10:15 p.m.	currently no credit; deroge $100,000 payment stopped 1/84 settlement.
Harrah's Marina	10:20 p.m.	front money only.
Caesars	10:25 p.m.	currently no credit; $60,000 write-off owing; deroge $60,000 write-off 12/84, $200,000 payment stopped 1/84.
Trump Plaza	10:30 p.m.	current $500,000 credit limit; zero outstanding balance; high action $550,000; last action 9/7/87.
Atlantis	10:35 p.m.	inactive.

The above-captioned casino credit information was recorded by Resorts Credit Clerk Supervisor Debra Innis on the pages designated "Rundowns" in Richard Hartman's 1987 credit file, and can be found at pages 4 and 5 of Exhibit 1.

17. Credit Clerk Supervisor Debra Innis also obtained the following bank information from the Sands at 10:10 p.m. on September 10, 1987, regarding Richard Hartman's bank account #1010000676 at Irving Trust:

Type of Account - Sole Proprietorship
Average balance - medium 6
Date opened - January, 1983
Date information obtained - July 23, 1987
Signature authority - can sign alone

The above information was recorded by Credit Clerk Supervisor Innis on the page designated "Rundowns" in Richard Hartman's 1987 credit file and can be found at page 4 of Exhibit 1. Credit Clerk Supervisor Innis also recorded on such page that "Kim" a "Credit Clerk" and "Bob" a "Credit Executive" from the Sands had directly provided the casino credit and bank information to Resorts. The Sands also disclosed that it had obtained the bank information on July 23, 1987.

18. On September 10, 1987, at 10:45 p.m., Credit Clerk Supervisor Debra Innis recorded in Richard Hartman's credit file information regarding Richard Hartman's non-casino indebtedness. The source for the information was a credit report obtained from a credit bureau named Credit Bureau Associates (hereinafter "CBA"). The CBA credit report disclosed a zero balance on a Diner's Club account and a loan in the amount of $5,800 from National Westminster Bank which had been satisfied in January 1983. The CBA credit report further disclosed information regarding a civil judgment, dated September 27, 1984, in that amount of $1,600 that was entered against Richard Hartman in a suit involving the New York City Department of Finance. A copy of the credit bureau report obtained from CBA is included within Richard Hartman's credit file and can be found at page 14 of Exhibit 1.

19. On September 11, 1987, at 11:50 p.m., Credit Clerk Supervisor Debra Innis recorded at the first page of Richard Hartman's 1987 credit file an address for Richard Hartman in the space designated "residence address." The source for the address information recorded by Credit Clerk Supervisor Innis was the CBA credit report referenced in paragraph 18, supra. The CBA credit report disclosed the following address for Richard Hartman: 252-00 Horace Harding Expressway, Flushing, New York 11362. Credit Clerk Supervisor Innis also recorded her verification of Mr. Hartman's residence on the page designated "Address Verification" in Mr. Hartman's 1987 credit file which can be found at page 8 of Exhibit 1.

20. On September 18, 1987, at 3:30 p.m., Resorts Credit Clerk Supervisor Barbara Austin performed additional casino credit limit and outstanding balance verifications regarding Richard Hartman by contacting CCLV and other casino licensees directly. The information obtained and recorded in Richard Hartman's credit file under the designation "Intransits" on September 18, 1987, which can be found at page 6 of Exhibit 1, was as follows:

Atlantic City Casino	Information Obtained and Recorded
Bally's	Inactive, $15,000 old casino account write-off 8/6/87.
Caesars	No credit, $200,000 payment stopped 1/84, owes.
Trump Plaza	$500,000 current outstanding balance from 9/11/87, $1,000,000 limit.
Harrah's Marina	No credit..
Sands	Zero current balance, $400,000 limit.
Trump Castle	Zero current balance, $500,000 limit.
Atlantis	Inactive.

A copy of the Central Credit Summary Review for patron Richard Hartman dated September 18, 1987, is included within Richard Hartman's Credit file and can be found at page 15 of Exhibit 1.

21. On September 19, 1987, between 10:15 p.m. and 10:20 p.m., Resorts Credit Clerk Supervisor Debra Innis performed additional casino credit limit and outstanding balance verifications regarding Richard Hartman by contacting CCLV and other casino licensees directly. The information obtained and recorded in Richard Hartman's 1987 credit file under the designation "Intransits" on September 19, 1987, which can be found at page 6 of Exhibit 1, was as follows:

Atlantic City Casino	Information Obtained and Recorded
Trump Plaza	$1,000,000 current outstanding balance from 9/18/87, $1,000,000 limit.
Sands	$400,000 current outstanding balance from 9/19/87, $400,000 limit.
Trump Castle	$500,000 current outstanding balance from 9/19/87, $500,000 limit.
Bally's	Write-off $15,000 10/84.
Harrah's Marina	No credit, regular cash play only.
Caesars	$60,000 write-off, still owing.

A copy of the Central Credit Summary Review for patron Richard Hartman dated September 19,. 1987, is included within Richard Hartman's credit file and can be found at page 16 of Exhibit 1.

22. On September 19, 1987, at or before 10:45 p.m., Resorts Credit Executive Douglas Payne received a telephone call from Mr. Hartman in which Mr. Hartman communicated that he intended to come into Resorts later that evening. Later that evening, but at or before 10:45 p.m., Richard Hartman presented himself at the Credit Department offices of Resorts. Resorts Credit Executive Douglas Payne completed those portions of the credit application form that required completion, including the following information:

Mailing address - 252-00 Horace Harding Expressway
Little Neck, New York 11502

No. of years (mailing address) - 8

No. of years (type of business) - 23

No. of years (business address) - 8

Bank name - Irving Trust
Branch address - 1 Wall Street
City, State, Zip - New York, N.Y. 10007
Account Number - 1010000676
ABA Number - 1-67/210
Maximum credit limit - 200,000
requested
Correspondence to - business
Income/Source - 6 million/business
Assets/Source - 2 million/accounts receivable
Indebtedness excluding casino debts - 0
Casino debts - Trump Plaza for $1,000,000
Sands for $400,000
Trump's Castle for $500,000

The information recorded by Credit Executive Douglas Payne, as described above, can be found at pages 1 and 2 of Exhibit 1.

23. On Saturday, September 19, 1987, after the credit application form was completed and signed by Mr. Hartman and before 10:45 p.m., Resorts Credit Clerk Supervisor Debra Innis attempted to verify Richard Hartman's bank information regarding bank account #1010000676 by telephonically contacting Irving Trust. Credit Clerk Supervisor Innis made the notation "bank closed" in Richard Hartman's 1987 credit file under the designation "Bank Verification" which can be found at page 9 of Exhibit 1.

24. In connection with the completion of the credit application form, as described in paragraph 22, supra, Resorts requested Richard Hartman to sign a "Confidential Credit Inquiry" letter to be sent to Irving Trust to provide Resorts with information concerning Mr. Hartman's business and personal accounts established at Irving Trust. A copy of the "Confidential Credit Inquiry" letter is included within Richard Hartman's credit file and can be found at page 17 of Exhibit 1.

25. Following the completion of the credit application form, as described in paragraph 22, supra, and the "Confidential Credit Inquiry" letter, as described in paragraph 24, supra, Resorts Cage Shift Supervisor Robert Capozzi examined Mr. Hartman's identification credentials which consisted of his New York State driver's

license. Cage Shift Supervisor Capozzi recorded his examination of the driver's license in Richard Hartman's 1987 credit file at 10:40 p.m., on September 19, 1987. The record of Cage Shift Supervisor Capozzi's examination of the driver's license can be found at page 12 of Exhibit 1. A copy of Mr. Hartman's driver's license was also included in the credit file and can be found at page 18 of Exhibit 1. The address contained on the driver's license was 2922 Lonni Lane, Merrick, New York 11566.

26. On September 19, 1987, at 10:45 p.m., patron Richard Hartman was granted a casino credit line in the amount of $200,000 at Resorts. Said credit line was approved by Vice President of Credit Operations Gary Grant and former Vice President of Casino Operations Jeff Ross. Recorded in the credit file at page 3 of Exhibit 1 in the box designated "Summary of Credit Decision, Include Disregard of Deroge Information" is the following: "Bank report and established in other casinos."

27. In approving the credit decision described in paragraph 26, supra, an arrangement was made with Mr. Hartman that any counter checks, or checks received in substitution of counter checks, which were outstanding at the end of patron Richard Hartman's gaming trip to Resorts would be immediately deposited for collection on the next business day. Said deposit arrangement was not recorded within Richard Hartman's 1987 credit file.

28. On September 19, 1987, at 11:20 p.m., Credit Clerk Supervisor Debra Innis prepared and mailed to Irving Trust in New York City the "Confidential Credit Inquiry" letter regarding Richard Hartman's bank account 1010000676. Resorts' Credit Check List for patron Richard Hartman indicates that Resorts did not receive a response from Irving Trust. A copy of said Credit Check List is included in Richard Hartman's credit file and can be found at page 11 of Exhibit 1.

29. On gaming day September 19, 1987, at 10:50 p.m., Richard Hartman was issued counter check #70919707875 in the amount of $200,000 on his approved casino credit account at Resorts. Approximately 1 hour later, at 11:45 p.m., Richard Hartman substituted said counter check with a $200,000 personal check. A copy of counter check #70919707875 and the documentation regarding the substitution transaction is attached hereto as Exhibit 2.

30. On September 20, 1987, the personal check, as described in paragraph 29, supra, was deposited by Resorts into its depository bank account consistent with the arrangement described in paragraph 27, supra. After deposit, Vice President of Credit Operations Gary Grant telephonically contacted Irving Trust and was informed that there were sufficient funds in patron Richard Hartman's account for the check to clear.

31. On gaming day October 1, 1987, at 7:35 p.m., patron Richard Hartman requested that Respondent Resorts increase his approved casino credit line from $200,000 to $500,000. A 'Credit Limit Request" form was signed by Mr. Hartman and retained in his credit file at Resorts and can be found at page 19 of Exhibit 1.

32. Prior to making a decision on Richard Hartman's request for an increase in his casino credit line at Resorts on October 1, 1987, Resorts Credit Clerk Supervisor Debra Innis obtained information regarding Mr. Hartman's outstanding balances at other Atlantic City casinos. At or between 5:15 p.m. and 5:20 p.m., on October 1, 1987, Credit Clerk Supervisor Innis obtained a Central Credit Summary Review from CCLV and directly contacted several Atlantic City casinos and obtained the following casino credit information:

Atlantic City Casino	Information Obtained and Recorded
Trump Castle	$500,000 credit limit; $500,000 current outstanding balance from September 24, 1987.
Trump Plaza	$1,000,000 credit limit; $500,000 outstanding balance from September 22, 1987 in transit.
Sands	Suspended credit company decision, $400,000 in transit from September 19, 1987."

The above described information was recorded in Richard Hartman's 1987 credit file under the designation "Intransits" and can be found at page 6 of Exhibit 1. A copy of the Central Credit Summary Review dated October 1, 1987, is included within Richard Hartman's credit file and can be found at page 20 of Exhibit 1.

33. On October 1, 1987, at 7:45 p.m., Respondent Resorts approved the $300,000 credit limit increase requested by Richard Hartman. The credit limit increase was approved by Vice President of Casino Operations Jeff Ross. Recorded in the credit file at page 3 of Exhibit 1 in the box designated "Summary of Credit Decision, Include Disregard of Derog Information" is the following: "Payment record, other casinos and management decision."

34. On gaming day October 1, 1987, at 7:54 p.m., Richard Hartman was issued counter check #71001745850 in the amount of $500,000 on his approved casino credit at Resorts. On the same gaming day, at 2:47 a.m., Richard Hartman substituted said counter check with a $500,000 personal check. A copy of counter check #71001745850 and the documentation regarding the substitution transaction is attached hereto as Exhibit 3.

35. On October 2, 1987, the personal check, as described in paragraph 33, supra, was deposited by Resorts into its depository bank account consistent with the arrangement described in paragraph 27, supra. On or before gaming day October 7, 1987, Resorts Credit Department telephonically contacted Irving Trust and was informed that the October 1, 1987, personal check of Richard Hartman had cleared the bank.

36. Resorts' computer system, as it then operated, was programmed to recognize as cleared a personal check drawn on a New York City bank and deposited in Resorts' depository account ten (10) days after deposit. Although Mr. Hartman's $500,000 personal check, as described in paragraph 34, supra, had cleared Irving Trust on or before gaming day October 7, 1987, Resorts' computer system did not recognize it as cleared until October 12, 1987, ten (10) days after its deposit. Since Resorts' computer system did not reflect any available credit on Mr. Hartman's $500,000 credit line, he could not be issued any counter checks unless his credit limit was increased.

37. On gaming day October 7, 1987, at 4:00 p.m., Richard Hartman requested that Respondent Resorts increase his approved casino credit line from $500,000 to $1,000,000. A "Credit Limit Request" form was signed by Mr. Hartman and retained in his credit file and can be found at page 21 of Exhibit 1.

38. Prior to making a decision on Richard Hartman's request for an increase in his casino credit line at Resorts on October 7, 1987, Resorts Credit Clerk Supervisor Judith Braddock Smith obtained information regarding Mr. Hartman's current casino credit limits and outstanding balances at other Atlantic City casinos. At or between 2:05 p.m. and 2:27 p.m. on October 7, 1987, Credit Clerk Supervisor Smith directly contacted the following Atlantic City casinos and obtained the following information regarding Mr. Hartman's credit limits and outstanding balances:

Atlantic City Casino	Time Information Obtained	Information Obtained and Recorded
Sands	2:05 p.m.	suspended credit account-credit executive decision; zero outstanding balance.
Trump Plaza	2:10 p.m.	current $1,000,000 credit limit; $500,000 outstanding balance; in transit 9/29/87.
Harrah's Marina	2:27 p.m.	front money only.

The above described information was recorded by Credit Clerk Supervisor Smith in Richard Hartman's 1987 credit file on the page designated "Rundowns," which can be found at page 5 of Exhibit 1.

39. On October 7, 1987, Credit Clerk Supervisor Smith also requested a Central Credit Summary Review from CCLV which was received on or about 2:11 p.m. (E.S.T.) . The information obtained from the Central Credit Summary Review regarding Mr. Hartman's casino credit limits and outstanding balances were as follows:

Atlantic City Casino	Information Obtained and Recorded
Trump Castle	$500,000 credit limit; $500,000 outstanding balance from September 24, 1987.
Trump Plaza	$1,000,000 credit limit; $500,000 outstanding balance from September 22, 1987.
Sands	$400,000 credit limit; zero current balance.

The above described information was recorded by Credit Clerk Supervisor Smith in Richard Hartman's 1987 credit file on the page designated "Intransits," which can be found at page 7 of Exhibit 1.

40. On October 7, 1987, at 4:15 p.m., Respondent Resorts approved the $500,000 credit limit increase requested by Richard Hartman raising his approved credit line to $1,000,000. The credit limit increase was approved by Vice President of Credit Operations Gary Grant and former Vice President of Casino Operations Jeff Ross. Recorded in the credit file at page 3 of Exhibit 1 in the box designated "Summary of Credit Decision, Include Disregard of Derog Information" is the following: "Payment record, other casino credit and management decision."

41. On gaming day October 7, 1987, at 4:37 p.m., Richard Hartman was issued counter check #71007760491 in the amount of $500,000 on his approved casino credit account at Resorts. Approximately 30 minutes later, at 5:03 p.m., Richard Hartman substituted said counter check with a $500,000 personal check. A copy of counter check #71007760491 and the documentation regarding the substitution transaction is attached as Exhibit 4.

42. On gaming day October 7, 1987, at 2:43 a.m., Richard Hartman presented to Resorts casino check #2665 issued to Mr. Hartman by Trump Plaza in the amount of $500,000 and dated October 7, 1987. Said casino check was accepted by Resorts in a substitution transaction for the $500,000 personal check presented by Richard Hartman to Resorts earlier that same gaming day, as described in paragraph 41, supra. A copy of casino check #2665 and the documentation regarding the substitution transaction is attached hereto as Exhibit 5.

43. On gaming day October 11, 1987, at 10:51 p.m., Richard Hartman was issued counter check #71011783226 in the amount of $500,000 on his approved credit account at Resorts. Approximately 1 1/2 hours later, at 12:27 a.m., Richard Hartman redeemed said counter check with $500,000 in gaming chips. A copy of counter check #71011783226 and the documentation regarding the redemption transaction is attached hereto as Exhibit 6.

44. On gaming day October 12, 1987, at 3:23 p.m., Richard Hartman was issued counter check #71012785760 in the amount of $500,000 on his approved

casino credit account at Resorts. Approximately 30 minutes later, at 3:56 p.m., Richard Hartman redeemed said counter check with $500,000 in gaming chips. A copy of counter check #71012785760 and the documentation regarding the redemption transaction is attached hereto as Exhibit 7.

45. On gaming day October 12, 1987, at 11:36 p.m., Richard Hartman was issued counter check #7101278721 in the amount of $500,000 on his approved casino credit account at Resorts. Said counter check remained outstanding as of the close of business on gaming day October 12, 1987. A copy of counter check #71012786721 is attached hereto as Exhibit 8.

46. Richard Hartman's last gaming activity at Resorts on his approved casino credit account was October 12, 1987, as described in paragraphs 44 and 45, supra, at which time Mr. Hartman"s outstanding casino credit balance was $500,000.

47. Resorts' Customer Action Report pertaining to Richard Hartman"s gaming activity at Resorts for the months of September and October 1987 indicate that Mr. Hartman sustained net gaming losses in the total amount of $1,685,400 during those two months. A copy of Resorts' Customer Action Report for Richard Hartman is attached hereto as Exhibit 9.

48. On February 19, 1988, counter check #71012786721 in the amount of $500,000 as described in paragraph 45, supra, was deposited by Resorts into its depository bank account.

49. On or about March 2, 1988, counter check #71012786721 in the amount of $500,000 was returned unpaid to Resorts for the stated reason that a stop payment order had been issued on said counter check. A copy of returned counter check #71012786721 is attached hereto as Exhibit 10.

50. To date, the returned check balance in the amount of $500,000 on the casino credit account of Richard Hartman at Resorts as described in paragraph 49, supra, remains unpaid.

51. During the course of the Division's investigation of the subject matter which resulted in the filing of the Division's Complaint, Division representatives

requested copies of the personal checks accepted from Richard Hartman on September 19, 1987, October 1, 1987 and October 7, 1987, as described in paragraphs 29, 34, and 41, supra. Resorts personnel were able to produce a microfilm reproduction of the personal check dated September 19, 1987, but they were unable to produce copies of the October 1, 1987 and October 7, 1987 personal checks. A copy of the personal check dated September 19, 1987, is attached hereto as Exhibit 11.

52. Resorts, as a matter of company policy, makes a copy of all personal checks accepted from patrons in substitution transactions, like that described in paragraphs 29 and 34, supra, prior to deposit in its depository account for payment. Such copies are made for the purpose of demonstrating to the bank where Resorts' depository account is maintained the deposit of such checks if any problems arise. Resorts does not make copies of personal checks accepted from patrons in substitution transactions, like that described in paragraph 41, supra, which are later returned to the respective patron in subsequent substitution transactions prior to deposit.

53. During the course of discovery in the instant matter, Resorts located a copy of the front of Richard Hartman's personal check dated October 1, 1987 and provided same to the Division. The personal check of Richard Hartman's dated October 7, 1987 was not copied or microfilmed by Resorts because it was not deposited; rather, it was returned to Mr. Hartman in exchange for a casino check, as described in paragraph 42, supra. A copy of the personal check dated October 1, 1987, provided to the Division in discovery is attached hereto as Exhibit 12.

54. As part of the Division's investigation in the instant matter, sworn investigative interviews were conducted of credit clerk supervisor Judith Braddock Smith, casino cage shift manager Robert Capozzi, and Vice President of Credit Operations Gary Grant. A copy of the transcript of said interviews is attached hereto as Exhibit 13. Additionally, five exhibits were utilized at the sworn investigative interviews and are attached hereto as Exhibits 14 through 18, respectively.

55. Resorts recognizes the necessity for maintaining compliance with the Act and regulations promulgated thereunder. Resorts is presently in the process of drafting a training manual for use by its Casino Credit Department. The training

manual, when complete, will serve as an aid in providing comprehensive training to Resorts' Casino Credit Department employees. The training manual is to reemphasize the requirements of the Act and regulations with respect to the proper procedures for the issuance of casino credit. Resorts intends to distribute such manual to all current and new employees with responsibilities affecting the issuance of casino credit.

56. Upon completion of the training manual, more fully described in Paragraph 55, supra, Resorts intends to conduct retraining seminars for all employees of its Casino Credit Department. The retraining seminars are to emphasize the proper procedures for the issuance of casino credit, including all requirements of the Act.

SETTLEMENT

WHEREAS, the parties have endeavored to submit to the Office of Administrative Law and the Casino Control Commission a detailed submission of all material and relevant facts pertinent to the allegations contained in Division Complaint No. 88-386. Additionally, the parties must submit for purposes of this Stipulation of Facts and Settlement various exhibits described in the Table of Exhibits attached hereto, and

WHEREAS, the parties agree that if the Stipulation of Facts and Settlement set forth herein are not accepted in their entirety by the Casino Control Commission, the parties are no longer bound thereby and each party retains its right to proceed to a hearing before the Office of Administrative Law for the purpose of adjudicating this Complaint, and

WHEREAS, with respect to Counts I and II of Division Complaint No. 88-386, Respondent admits that its September 19, 1987 decision to approve a $200,000 credit limit for Richard Hartman violated N.J.A.C. 19:45-1.27(a) by virtue of such approval not being adequately supported by the information contained in his credit file, to wit:

(1) Respondent did not obtain from Mr. Hartman, as opposed to other sources, verify and record in his credit file, his residence address, in violation of N.J.A.C. 19:45-1.27(a)2 and (c)1;

(2) Respondent did not adequately verify and record in his credit file the type, balances, date opened and last name of the person supplying the bank information, in violation of N.J.A.C. 19:45-1.27(c)4i, iii, iv and vii;

(3) Respondent did not adequately record in his credit file information used and a brief summary of the key factors relied upon in its decision to approve the credit limit in violation of N.J.A.C. 19:45-1.27(f); and

(4) Respondent did not adequately record in his credit file the reasons credit was approved in light of his 1984 casino credit problems, in violation of N.J.A.C. 19:45-1.27(f)3.

WHEREAS, with respect to Counts III and IV of Division Complaint No. 88-386, Respondent admits that its October 1, 1987 decision to increase the credit limit of Mr. Hartman by an additional $300,000 and its October 7, 1987 decision to increase the credit limit of Mr. Hartman by an additional $500,000 violated N.J.A.C. 19:45-1.27(a) by virtue of such increases not being adequately supported by the information contained in his credit file, to wit:

(1) Respondent increased Mr. Hartman's credit limit notwithstanding the initial deficiencies in the credit file as set forth above with respect to Counts I and II in violation of N.J.A.C. 19:45-1.27(a), (c) and (f); and

(2) Respondent did not adequately record in his credit file information used and a brief summary of the key factors relied upon in its decision to approve credit limit increases in violation of N.J.A.C. 19:45-1.27(f).

WHEREAS, with respect to Count V of Division Complaint No. 88-386, Respondent admits that it violated N.J.S.A. 5:12-96(e) by virtue of the fact that a copy of Mr. Hartman's personal check presented to the casino cage on October 1, 1987 was maintained by Resorts and not made immediately available to the Division agent who requested same during the Division's investigation in the instant matter. With respect to the personal check presented to the casino cage on October 7, 1987 Resorts did not maintain a copy of said check since it was returned to the patron prior to deposit in exchange for a casino check. The Division agrees to dismiss the allegations set forth in Count V of Division Complaint No. 88-386 as they relate to the personal check presented on October 7, 1987.

WHEREAS, the parties hereby stipulate and agree that the validity and enforceability of counter check #71012786721 under N.J.S.A. 5:12-101 is not an issue addressed in this action and Respondent specifically preserves its rights with respect to this issue in a separate proceeding.

IT IS THEREFORE consented to and agreed upon by and between the parties that:

A. Respondent Resorts agrees to pay the sum of forty thousand dollars ($40,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.27(a), 1.27(c)1, 1.27(c)4, 1.27(a) and (f) relative to Counts I and II of Division Complaint No. 88-386.

B. Respondent Resorts agrees to pay the sum of sixty thousand dollars ($60,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.27(a) and (f) relative to Counts III and IV of Division Complaint No. 88-386.

C. Respondent Resorts agrees to pay the sum of two thousand five hundred dollars ($2,500) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violation of N.J.S.A. 5:12-96(e) relative to Count V of Division Complaint No. 88-386.

D. This Settlement Agreement, upon approval of the Casino Control Commission, is a full and final settlement of all allegations, matters, issues, brought or which could have been brought, and claims and possible claims relating to Division Complaint No. 88-386.

FINDINGS AND CONCLUSIONS

Having carefully reviewed and considered the entire record before me, I **FIND** that:

1. The parties have voluntarily agreed to the settlement terms as evidenced by the signatures of their respective representatives:and

2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I **CONCLUDE,** therefore, that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION** who 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

9 November 1989
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

11-14-89
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

_____
DATE

_____
OFFICE OF ADMINISTRATIVE LAW

ldr

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO.: 88-386
OAL DOCKET NO. CCC 6177-88

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, vs. RESORTS INTERNATIONAL HOTEL, INC., t/a RESORTS INTERNATIONAL CASINO/HOTEL, Respondent.	Civil Action STIPULATION OF FACTS AND SETTLEMENT AGREEMENT

With the above-captioned matter having been discussed by and between the parties involved, Peter N. Perretti, Jr., Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming

Enforcement, by Kevin F. O'Toole, Deputy Attorney General, and Jack Gorny, Esquire, of Horn, Kaplan, Goldberg, Gorny & Daniels, Attorneys for Respondent Resorts International Hotel, Inc., t/a Resorts International Casino/Hotel, and all matters having been agreed upon, it is hereby stipulated and agreed by and between the parties as follows:

1. Respondent, Resorts International Hotel, Inc. t/a Resorts International Casino/Hotel (hereinafter "Resorts"), is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at times referenced herein has had its principal place of business located at North Carolina and the Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Resorts is the holder of, and operates pursuant to, a Certificate of Operation effective May 26, 1978 at which time Resorts was the holder of a temporary casino permit. Resorts has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date including all times referenced herein. Said Certificate of Operation entitles Resorts to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

3. Resorts is now the holder of a plenary casino license issued to it by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to Resorts effective February

26, 1979, and was last renewed for a term of two years on or about February 26, 1988.

4. At the time of its last license renewal, Resorts had been conducting its casino hotel operations under the ownership and control of Mr. Donald J. Trump. Mr. Trump had purchased Resorts from the Estate of Mr. James M. Crosby on or about July 21, 1987.

5. On November 15, 1988, Resorts was acquired from Mr. Donald J. Trump by The Griffin Company. The Griffin Company is an entity which is wholly-owned by Mr. Merv Griffin.

6. On June 3, 1988, the Division filed with the Commission the complaint in the above-captioned matter. Said complaint alleges various violations of N.J.A.C. 19:45-1.1 et seq. against Resorts which pertain to the approval of a casino credit account for Richard Hartman on September 19, 1987, and subsequent credit limit increases approved on October 1, 1987, and October 7, 1987, respectively.

7. Richard Hartman had initially established a casino credit account at Resorts on or about April 12, 1983. As of November 23, 1983, Richard Hartman's outstanding credit owing to Resorts consisted of a $200,000 counter check executed by Mr. Hartman on that date.

8. On January 10, 1984, Resorts was notified by a representative of Richard Hartman that Mr. Hartman had placed a stop payment against his outstanding counter check at Resorts. On January 18, 1984, Resorts deposited Mr. Hartman's outstanding

counter check and on January 30, 1984, said counter check was returned unpaid for the reason "payment stopped."

9. On or about August 8, 1984, Richard Hartman paid $70,000, or 35% of the amount owed, to Resorts in full settlement of his $200,000 casino credit debt. The unpaid balance of $130,000 was written-off by Resorts for the quarter ending September 30, 1984.

10. On or about September 10, 1987, Richard Hartman had a telephone conversation with Jeff Ross, then Resorts' Vice President of Casino Operations, regarding the establishment of a casino credit account at Resorts.

11. Based on the telephone conversation described in paragraph 10, supra, Mr. Ross requested Gary Grant, Resorts' Vice President of Credit Operations, to begin gathering information to prepare a credit file for Mr. Hartman. A copy of Richard Hartman's complete 1987 credit file, consisting of 24 pages, is attached hereto as Exhibit 1.

12. On September 10, 1987, Resorts Credit Department personnel began gathering information regarding Mr. Hartman's bank, casino credit and other non-casino credit data. The information thus obtained by the Resorts Credit Department personnel is set forth at paragraphs 13 through 25 of this Stipulation, infra.

13. On September 10, 1987, at 9:58 p.m. (E.S.T.) Resorts Credit Department obtained information from an approved casino credit bureau, Central Credit of Las Vegas (hereinafter "CCLV"), regarding Richard Hartman's credit limits and outstanding balances at other Atlantic City casinos. The information obtained from CCLV

was contained on a document entitled "Central Credit Gaming Report," a copy of which is found at page 13 of Exhibit 1.

14. The Central Credit Gaming Report described in paragraph 13, supra, disclosed that Richard Hartman established casino credit and front money accounts at various Atlantic City casinos commencing in or about September, 1980. A summary of the Central Credit Gaming Report disclosed the following information from the following casinos:

Caesars Boardwalk Regency	Credit established 9/28/80; no credit as of inquiry on 2/21/87; $200,000 payment stopped, 1/28/84; write-off 12/1/84, $60,000; balance 9/7/87, $60,000.
Bally's Park Place	Credit established 8/23/81; high action 9/10/83, $667,500; last action 10/10/83, $100,000; $100,000 account closed 2/13/84; settled 10/6/84; paid 2/21/86; $15,000 write-off, 8/6/87; balance 9/6/87, $15,000.
Atlantis	Front money established 3/12/82, inactive, 8/6/87; no account 3/27/87.
Sands N. J.	Credit established 9/11/82; current limit $200,000 as of 8/17/87; $200,000 payment stopped, 1/24/84; paid 2/26/86; per CCLV inquiry 9/7/87 no information released because patron "preferred."
Golden Nugget N. J.	Credit established 3/2/83; high and last action, 8/29/83, $100,000; $100,000 payment stopped 1/15/84; paid 2/19/86; per CCLV inquiry 9/7/87 no information released because patron "preferred."
Resorts	Credit established 4/12/83; no credit as of 8/17/87; $200,000 payment stopped 2/27/84; $130,000 write-off, 9/28/84; paid clear 9/7/87.

Harrah's Marina	Account established 4/6/84; $300,00 credit limit as of inquiry on 8/31/87, high and last action 8/25/87, $300,000; per CCLV inquiry 9/7/87 no information released because patron "preferred."
Trump Casino/Hotel	Account established 12/9/86; current $1,000,000 limit; high and last action 9/7/87, $500,000; current balance $500,000 from 9/7/87.

15. The Central Credit Gaming Report described in paragraphs 13 and 14, supra, also disclosed the following information regarding a bank accoun maintained by Richard Hartman at Irving Trust:

Account Number:	1010000676
Type of Account:	Business regular
Average Balance:	Medium 5, low 6
Current Balance:	Not available
Age of Account:	Opened 6 years
	Excellent customer

The Central Credit Gaming Report further disclosed that CCLV had obtained the information from the Sands on October 30, 1986.

16. On September 10, 1987, between 10:10 p.m. and 10:35 p.m., the Credit Department of Resorts also obtained casino credit information regarding Richard Hartman by directly contacting other casino licensees in Atlantic City. The casinos contacted and the information obtained and recorded by then Resorts Credit Clerk Supervisor and former employee Debra Innis included the following:

Atlantic City Casino	Time Information Obtained	Information Obtained and Recorded
Sands	10:10 p.m.	current $400,000 credit limit; $400,000 outstanding balance from 9/7/87; deroge $200,000 payment stopped 1/84.
Bally	10:12 p.m.	currently inactive; deroge $115,000 settlement 10/84.
Golden Nugget	10:15 p.m.	currently no credit; deroge $100,000 payment stopped 1/84 settlement.
Harrah's Marina	10:20 p.m.	front money only.
Caesars	10:25 p.m.	currently no credit; $60,000 write-off owing; deroge $60,000 write-off 12/84, $200,000 payment stopped 1/84.
Trump Plaza	10:30 p.m.	current $500,000 credit limit; zero outstanding balance; high action $550,000; last action 9/7/87.
Atlantis	10:35 p.m.	inactive.

The above-captioned casino credit information was recorded by Resorts Credit Clerk Supervisor Debra Innis on the pages designated "Rundowns" in Richard Hartman's 1987 credit file, and can be found at pages 4 and 5 of Exhibit 1.

17. Credit Clerk Supervisor Debra Innis also obtained the following bank information from the Sands at 10:10 p.m. on September 10, 1987, regarding Richard Hartman's bank account #1010000676 at Irving Trust:

Type of account - Sole Proprietorship

Average balance - medium 6

Date opened - January, 1983

Date information obtained - July 23, 1987

Signature authority - can sign alone

The above information was recorded by Credit Clerk Supervisor Innis on the page designated "Rundowns" in Richard Hartman's 1987 credit file and can be found at page 4 of Exhibit 1. Credit Clerk Supervisor Innis also recorded on such page that "Kim" a "Credit Clerk" and "Bob" a "Credit Executive" from the Sands had directly provided the casino credit and bank information to Resorts. The Sands also disclosed that it had obtained the bank information on July 23, 1987.

18. On September 10, 1987, at 10:45 p.m., Credit Clerk Supervisor Debra Innis recorded in Richard Hartman's credit file information regarding Richard Hartman's outstanding non-casino indebtedness. The source for the information was a credit report obtained from a credit bureau named Credit Bureau Associates (hereinafter "CBA"). The CBA credit report disclosed a zero balance on a Diner's Club account and a loan in the amount of $5,800 from National Westminster Bank which had been satisfied in January 1983. The CBA credit report further disclosed information regarding a civil judgment, dated September 27, 1984, in the amount of $1,600 that was entered against Richard Hartman in a suit involving the New York City Department of Finance. A copy of the credit bureau report obtained from CBA is included within Richard Hartman's credit file and can be found at page 14 of Exhibit 1.

19. On September 11, 1987, at 11:50 p.m., Credit Clerk Supervisor Debra Innis recorded at the first page of Richard

Hartman's 1987 credit file an address for Richard Hartman in the space designated "residence address". The source for the address information recorded by Credit Clerk Supervisor Innis was the CBA credit report referenced in paragraph 18, supra. The CBA credit report disclosed the following address for Richard Hartman: 252-00 Horace Harding Expressway, Flushing, New York 11362. Credit Clerk Supervisor Innis also recorded her verification of Mr. Hartman's residence on the page designated "Address Verification" in Mr. Hartman's 1987 credit file which can be found at page 8 of Exhibit 1.

20. On September 18, 1987, at 3:30 p.m., Resorts Credit Clerk Supervisor Barbara Austin performed additional casino credit limit and outstanding balance verifications regarding Richard Hartman by contacting CCLV and other casino licensees directly. The information obtained from CCLV was contained on a Central Credit Summary Review for patron Richard Hartman. The information obtained and recorded in Richard Hartman's credit file under the designation "Intransits" on September 18, 1987, which can be found at page 6 of Exhibit 1, was as follows:

Atlantic City Casino	Information Obtained and Recorded
Bally's	Inactive, $15,000 old casino account write-off 8/6/87.
Caesars	No credit, $200,000 payment stopped 1/84, owes.
Trump Plaza	$500,000 current outstanding balance from 9/11/87, $1,000,000 limit.
Harrah's Marina	No credit.

Sands	Zero current balance, $400,000 limit.
Trump Castle	Zero current balance, $500,000 limit.
Atlantis	Inactive.

A copy of the Central Credit Summary Review for patron Richard Hartman dated September 18, 1987, is included within Richard Hartman's credit file and can be found at page 15 of Exhibit 1.

21. On September 19, 1987, between 10:15 p.m. and 10:20 p.m., Resorts Credit Clerk Supervisors Sue Simons and Debra Innis performed additional casino credit limit and outstanding balance verifications regarding Richard Hartman by contacting CCLV and other casino licensees directly. The information obtained from CCLV was contained on a Central Credit Summary Review for patron Richard Hartman. The information obtained and recorded in Richard Hartman's 1987 credit file under the designation "Intransits" on September 19, 1987, which can be found at page 6 of Exhibit 1, was as follows:

Atlantic City Casino	Information Obtained and Recorded
Trump Plaza	$1,000,000 current outstanding balance from 9/18/87, $1,000,000 limit.
Sands	$400,000 current outstanding balance from 9/19/87, $400,000 limit.
Trump Castle	$500,000 current outstanding balance from 9/19/87, $500,000 limit.
Bally's	Write-off $15,000 10/84.
Harrah's Marina	No credit, regular cash play only.

Caesars $60,000 write-off, still owing.

A copy of the Central Credit Summary Review for patron Richard Hartman dated September 19, 1987, is included within Richard Hartman's credit file and can be found at page 16 of Exhibit 1.

22. On September 19, 1987, at or before 10:45 p.m., Resorts Credit Executive Douglas Payne received a telephone call from Mr. Hartman in which Mr. Hartman communicated that he intended to come into Resorts later that evening. Later that evening, but at or before 10:45 p.m., Richard Hartman presented himself at the Credit Department offices of Resorts. Resorts Credit Executive Douglas Payne completed those portions of the credit application form that required completion, including the following information:

Mailing address - 252-00 Horace Harding Expressway
Little Neck, New York 11502

No. of years (mailing address) - 8

No. of years (type of business) - 23

No. of years (business address) - 8

Bank name - Irving Trust

Branch address - 1 Wall St.

City, State, Zip - New York, N.Y. 10007

Account number - 1010000676

ABA number - 1-67/210

Maximum credit limit - 200,000
requested

Correspondence to - business

Income/Source - 6 million/business

Assets/Source - 2 million/accounts receivable

Indebtedness excluding casino debts - 0

Casino debts - Trump Plaza for $1,000,000
Sands for $400,000
Trump's Castle for $500,000

The information recorded by Credit Executive Douglas Payne, as described above, can be found at pages 1 and 2 of Exhibit 1.

23. On Saturday, September 19, 1987, after the credit application form was completed and signed by Mr. Hartman and before 10:45 p.m., Resorts Credit Clerk Supervisor Debra Innis attempted to verify Richard Hartman's bank information regarding bank account #1010000676 by telephonically contacting Irving Trust. Credit Clerk Supervisor Innis made the notation "bank closed" in Richard Hartman's 1987 credit file under the designation "Bank Verification" which can be found at page 9 of Exhibit 1.

24. In connection with the completion of the credit application form, as described in paragraph 22, supra, Resorts requested Richard Hartman to sign a "Confidential Credit Inquiry" letter to be sent to Irving Trust to provide Resorts with information concerning Mr. Hartman's business and personal accounts established at Irving Trust. A copy of the "Confidential Credit Inquiry" letter is included within Richard Hartman's credit file and can be found at page 17 of Exhibit 1.

25. Following the completion of the credit application form, as described in paragraph 22, supra, and the "Confidential Credit Inquiry" letter, as described in paragraph 24, supra, Resorts Cage Shift Supervisor Robert Capozzi examined Mr. Hartman's identification credentials which consisted of his New York State

driver's license. Cage Shift Supervisor Capozzi recorded his examination of the driver's license in Richard Hartman's 1987 credit file at 10:40 p.m., on September 19, 1987. The record of Cage Shift Supervisor Capozzi's examination of the driver's license can be found at page 12 of Exhibit 1. A copy of Mr. Hartman's driver's license was also included in the credit file and can be found at page 18 of Exhibit 1. The address contained on the driver's license was 2922 Lonni Lane, Merrick, New York 11566.

26. On September 19, 1987, at 10:45 p.m., patron Richard Hartman was granted a casino credit line in the amount of $200,000 at Resorts. Said credit line was approved by Vice President of Credit Operations Gary Grant and former Vice President of Casino Operations Jeff Ross. Recorded in the credit file at page 3 of Exhibit 1 in the box designated "Summary of Credit Decision, Include Disregard of Derog Information" is the following: "Bank report and established in other casinos."

27. In approving the credit decision described in paragraph 26, supra, an arrangement was made with Mr. Hartman that any counter checks, or checks received in substitutuion of counter checks, which were outstanding at the end of patron Richard Hartman's gaming trip to Resorts would be immediately deposited for collection on the next business day. Said deposit arrangement was not recorded within Richard Hartman's 1987 credit file.

28. On September 19, 1987, at 11:20 p.m., Credit Clerk Supervisor Debra Innis prepared and mailed to Irving Trust in New York City the "Confidential Credit Inquiry" letter regarding

Richard Hartman's bank account 1010000676. Resorts' Credit Check List for patron Richard Hartman indicates that Resorts did not receive a response from Irving Trust. A copy of said Credit Check List is included in Richard Hartman's credit file and can be found at page 11 of Exhibit 1.

29. On gaming day September 19, 1987, at 10:50 p.m., Richard Hartman was issued counter check #70919707875 in the amount of $200,000 on his approved casino credit account at Resorts. Approximately 1 hour later, at 11:45 p.m., Richard Hartman substituted said counter check with a $200,000 personal check. A copy of counter check #70919707875 and the documentation regarding the substitution transaction is attached hereto as Exhibit 2.

30. On September 20, 1987, the personal check, as described in paragraph 29, supra, was deposited by Resorts into its depository bank account consistent with the arrangement described in paragraph 27, supra. After deposit, Vice President of Credit Operations Gary Grant telephonically contacted Irving Trust and was informed that there were sufficient funds in patron Richard Hartman's account for the check to clear.

31. On gaming day October 1, 1987, at 7:35 p.m., patron Richard Hartman requested that Respondent Resorts increase his approved casino credit line from $200,000 to $500,000. A "Credit Limit Request" form was signed by Mr. Hartman and retained in his credit file at Resorts and can be found at page 19 of Exhibit 1.

32. Prior to making a decision on Richard Hartman's request for an increase in his casino credit line at Resorts on October 1,

1987, Resorts Credit Clerk Supervisor Debra Innis obtained information regarding Mr. Hartman's current casino credit limits and outstanding balances at other Atlantic City casinos. At or between 5:15 p.m. and 5:20 p.m., on October 1, 1987, Credit Clerk Supervisor Innis obtained a Central Credit Summary Review from CCLV and directly contacted several Atlantic City casinos and obtained the following casino credit information:

Atlantic City Casino	Information Obtained and Recorded
Trump Castle	$500,000 credit limit; $500,000 current outstanding balance from September 24, 1987.
Trump Plaza	$1,000,000 credit limit; $500,000 outstanding balance from September 22, 1987 in transit.
Sands	Suspended credit company decision, $400,000 in transit from September 19, 1987.

The above described information was recorded in Richard Hartman's 1987 credit file under the designation "Intransits" and can be found at page 6 of Exhibit 1. A copy of the Central Credit Summary Review dated October 1, 1987, is included within Richard Hartman's credit file and can be found at page 20 of Exhibit 1.

33. On October 1, 1987, at 7:45 p.m, Respondent Resorts approved the $300,000 credit limit increase requested by Richard Hartman. The credit limit increase was approved by Vice President of Credit Operations Gary Grant and former Vice President of Casino Operations Jeff Ross. Recorded in the credit file at page 3 of Exhibit 1 in the box designated "Summary of Credit Decision,

Include Disregard of Derog Information" is the following: "Payment record, other casinos and management decision."

34. On gaming day October 1, 1987, at 7:54 p.m, Richard Hartman was issued counter check #71001745850 in the amount of $500,000 on his approved casino credit account at Resorts. On the same gaming day, at 2:47 a.m., Richard Hartman substituted said counter check with a $500,000 personal check. A copy of counter check #71001745850 and the documentation regarding the substitution transaction is attached hereto as Exhibit 3.

35. On October 2, 1987, the personal check, as described in paragraph 33, supra, was deposited by Resorts into its depository bank account consistent with the arrangement described in paragraph 27, supra. On or before gaming day October 7, 1987, Resorts Credit Department telephonically contacted Irving Trust and was informed that the October 1, 1987 personal check of Richard Hartman had cleared the bank.

36. Resorts' computer system, as it then operated, was programmed to recognize as cleared a personal check drawn on a New York City bank and deposited in Resorts' depository account ten (10) days after deposit. Although Mr. Hartman's $500,000 personal check, as described in paragraph 34, supra, had cleared Irving Trust on or before gaming day October 7, 1987, Resorts' computer system did not recognize it as cleared until October 12, 1987, ten (10) days after its deposit. Since Resorts' computer system did not reflect any available credit on Mr. Hartman's $500,000 credit

line, he could not be issued any counter checks unless his credit limit was increased.

37. On gaming day October 7, 1987, at 4:00 p.m, Richard Hartman requested that Respondent Resorts increase his approved casino credit line from $500,000 to $1,000,000. A "Credit Limit Request" form was signed by Mr. Hartman and retained in his credit file and can be found at page 21 of Exhibit 1.

38. Prior to making a decision on Richard Hartman's request for an increase in his casino credit line at Resorts on October 7, 1987, Resorts Credit Clerk Supervisor Judith Braddock Smith obtained information regarding Mr. Hartman's current casino credit limits and outstanding balances at other Atlantic City casinos. At or between 2:05 p.m. and 2:27 p.m. on October 7, 1987, Credit Clerk Supervisor Smith directly contacted the following Atlantic City casinos and obtained the following information regarding Mr. Hartman's credit limits and outstanding balances:

Atlantic City Casino	Time Information Obtained	Information Obtained and Recorded
Sands	2:05 p.m.	suspended credit account-credit executive decision; zero outstanding balance.
Trump Plaza	2:10 p.m.	current $1,000,000 credit limit; $500,000 outstanding balance; in transit 9/29/87.
Harrah's Marina	2:27 p.m.	front money only.

The above described information was recorded by Credit Clerk

Supervisor Smith in Richard Hartman's 1987 credit file on the page designated "Rundowns," which can be found at page 5 of Exhibit 1.

39. On October 7, 1987, Credit Clerk Supervisor Smith also requested a Central Credit Summary Review from CCLV which was received at or about 2:11 p.m. (E.S.T.). The information obtained from the Central Credit Summary Review regarding Mr. Hartman's casino credit limits and outstanding balances were as follows:

Atlantic City Casino	Information Obtained and Recorded
Trump Castle	$500,000 credit limit; $500,000 outstanding balance from September 24, 1987.
Trump Plaza	$1,000,000 credit limit; $500,000 outstanding balance from September 22, 1987.
Sands	$400,000 credit limit; zero current balance.

The above described information was recorded by Credit Clerk Supervisor Smith in Richard Hartman's 1987 credit file on the page designated "Intransits," which can be found at page 7 of Exhibit 1. A copy of the Central Credit Summary Review dated October 7, 1987, is included within Richard Hartman's credit file and can be found at page 22 of Exhibit 1.

40. On October 7, 1987, at 4:15 p.m., Respondent Resorts approved the $500,000 credit limit increase requested by Richard Hartman raising his approved credit line to $1 million. The credit limit increase was approved by Vice President of Credit Operations Gary Grant and former Vice President of Casino Operations Jeff Ross. Recorded in the credit file at page 3 of Exhibit 1 in the

box designated "Summary of Credit Decision, Include Disregard of Derog Information" is the following: "Payment record, other casino credit and management decision."

41. On gaming day October 7, 1987, at 4:37 p.m., Richard Hartman was issued counter check #71007760491 in the amount of $500,000 on his approved casino credit account at Resorts. Approximately 30 minutes later, at 5:03 p.m., Richard Hartman substituted said counter check with a $500,000 personal check. A copy of counter check #71007760491 and the documentation regarding the substitution transaction is attached as Exhibit 4.

42. On gaming day October 7, 1987, at 2:43 a.m., Richard Hartman presented to Resorts casino check #2665 issued to Mr. Hartman by Trump Plaza in the amount of $500,000 and dated October 7, 1987. Said casino check was accepted by Resorts in a substitution transaction for the $500,000 personal check presented by Richard Hartman to Resorts earlier that same gaming day, as described in paragraph 41, supra. A copy of casino check #2665 and the documentation regarding the substitution transaction is attached hereto as Exhibit 5.

43. On gaming day October 11, 1987, at 10:51 p.m., Richard Hartman was issued counter check #71011783226 in the amount of $500,000 on his approved casino credit account at Resorts. Approximately 1 1/2 hours later, at 12:27 a.m., Richard Hartman redeemed said counter check with $500,000 in gaming chips. A copy of counter check #71011783226 and the documentation regarding the redemption transaction is attached hereto as Exhibit 6.

44. On gaming day October 12, 1987, at 3:23 p.m., Richard Hartman was issued counter check #71012785760 in the amount of $500,000 on his approved casino credit account at Resorts. Approximately 30 minutes later, at 3:56 p.m., Richard Hartman redeemed said counter check with $500,000 in gaming chips. A copy of counter check #71012785760 and the documentation regarding the redemption transaction is attached hereto as Exhibit 7.

45. On gaming day October 12, 1987, at 11:36 p.m., Richard Hartman was issued counter check #71012786721 in the amount of $500,000 on his approved casino credit account at Resorts. Said counter check remained outstanding as of the close of business on gaming day October 12, 1987. A copy of counter check #71012786721 is attached hereto as Exhibit 8.

46. Richard Hartman's last gaming activity at Resorts on his approved casino credit account was October 12, 1987, as described in paragraphs 44 and 45, supra, at which time Mr. Hartman's outstanding casino credit balance was $500,000.

47. Resorts' Customer Action Report pertaining to Richard Hartman's gaming activity at Resorts for the months of September and October 1987 indicate that Mr. Hartman sustained net gaming losses in the total amount of $1,685,400 during those two months. A copy of Resorts' Customer Action Report for Richard Hartman is attached hereto as Exhibit 9.

48. On February 19, 1988, counter check #71012786721 in the amount of $500,000, as described in paragraph 45, supra, was deposited by Resorts into its depository bank account.

49. On or about March 2, 1988, counter check #71012786721 in the amount of $500,000 was returned unpaid to Resorts for the stated reason that a stop payment order had been issued on said counter check. A copy of returned counter check #71012786721 is attached hereto as Exhibit 10.

50. To date, the returned check balance in the amount of $500,000 on the casino credit account of Richard Hartman at Resorts as described in paragraph 49, supra, remains unpaid.

51. During the course of the Division's investigation of the subject matter which resulted in the filing of the Division's Complaint, Division representatives requested copies of the personal checks accepted from Richard Hartman on September 19, 1987, October 1, 1987 and October 7, 1987, as described in paragraphs 29, 34, and 41, supra. Resorts personnel were able to produce a microfilm reproduction of the personal check dated September 19, 1987, but they were unable to produce copies of the October 1, 1987 and October 7, 1987 personal checks. A copy of the personal check dated September 19, 1987, is attached hereto as Exhibit 11.

52. Resorts, as a matter of company policy, makes a copy of all personal checks accepted from patrons in substitution transactions, like that described in paragraphs 29 and 34, supra, prior to deposit in its depository account for payment. Such copies are made for the purpose of demonstrating to the bank where Resorts' depository account is maintained the deposit of such checks if any problems arise. Resorts does not make copies of

personal checks accepted from patrons in substitution transactions, like that described in paragraph 41, supra, which are later returned to the respective patron in subsequent substitution transactions prior to deposit.

53. During the course of discovery in the instant matter, Resorts located a copy of the front of Richard Hartman's personal check dated October 1, 1987 and provided same to the Division. The personal check of Richard Hartman dated October 7, 1987 was not copied or microfilmed by Resorts because it was not deposited; rather it was returned to Mr. Hartman in exchange for a casino check, as described in paragraph 42, supra. A copy of the personal check dated October 1, 1987, provided to the Division in discovery is attached hereto as Exhibit 12.

54. As part of the Division's investigation in the instant matter, sworn investigative interviews were conducted of credit clerk supervisor Juddith Braddock Smith, casino cage shift manager Robert Capozzi, and Vice President of Credit Operations Gary Grant. A copy of the transcript of said interviews is attached hereto as Exhibit 13. Additionally, five exhibits were utilized at the sworn investigative interviews and are attached hereto as Exhibits 14 through 18, respectively.

55. Resorts recognizes the necessity for maintaining compliance with the Act and regulations promulgated thereunder. Resorts is presently in the process of drafting a training manual for use by its Casino Credit Department. The training manual, when complete, will serve as an aid in providing comprehensive training

to Resorts' Casino Credit Department employees. The training manual is to reemphasize the requirements of the Act and regulations with respect to the proper procedures for the issuance of casino credit. Resorts intends to distribute such manual to all current and new employees with responsibilities affecting the issuance of casino credit.

56. Upon completion of the training manual, more fully described in Paragraph 55, supra, Resorts intends to conduct retraining seminars for all employees of its Casino Credit Department. The retraining seminars are to emphasize the proper procedures for the issuance of casino credit, including all requirements of the Act.

SETTLEMENT

WHEREAS, the parties have endeavored to submit to the Office of Administrative Law and the Casino Control Commission a detailed submission of all material and relevant facts pertinent to the allegations contained in Division Complaint No. 88-386. Additionally, the parties submit for purposes of this Stipulation of Facts and Settlement various exhibits described in the Table of Exhibits attached hereto, and

WHEREAS, the parties agree that if the Stipulation of Facts and Settlement set forth herein are not accepted in their entirety by the Casino Control Commission, the parties are no longer bound thereby and each party retains its right to proceed to a hearing before the Office of Administrative Law for the purpose of adjudicating this Complaint, and

WHEREAS, with respect to Counts 1 and II of Division Complaint No. 88-386, Respondent admits that its September 19, 1987 decision to approve a $200,000 credit limit for Richard Hartman violated N.J.A.C. 19:45-1.27(a) by virtue of such approval not being adequately supported by the information contained in his credit file, to wit:

(1) Respondent did not obtain from Mr. Hartman, as opposed to other sources, verify and record in his credit file, his residence address, in violation of N.J.A.C. 19:45-1.27(a)2 and (c)1;

(2) Respondent did not adequately verify and record in his credit file the type, balances, date opened and last name of the person supplying the bank information, in violation of N.J.A.C. 19:45-1.27(c)4i, iii, iv and vii;

(3) Respondent did not adequately record in his credit file information used and a brief summary of the key factors relied upon in its decision to approve the credit limit in violation of N.J.A.C. 19:45-1.27(f); and

(4) Respondent did not adequately record in his credit file the reasons credit was approved in light of his 1984 casino credit problems, in violation of N.J.A.C. 19:45-1.27(f)3.

WHEREAS, with respect to Counts III and IV of Division Complaint No. 88-386, Respondent admits that its October 1, 1987 decision to increase the credit limit of Mr. Hartman by an additional $300,000 and its October 7, 1987 decision to increase the credit limit of Mr. Hartman by an additional $500,000 violated N.J.A.C. 19:45-1.27(a) by virtue of such increases not being adequately supported by the information contained in his credit file, to wit:

(1) Respondent increased Mr. Hartman's credit limit notwithstanding the initial deficiencies in the credit file as set forth above with respect to Counts I and II in violation of N.J.A.C. 19:45-1.27(a), (c) and (f); and

(2) Respondent did not adequately record in his credit file information used and a brief summary of the key factors relied upon in its decision to approve the credit limit increases in violation of N.J.A.C. 19:45-1.27(f).

WHEREAS, with respect to Count V of Division Complaint No. 88-386, Respondent admits that it violated N.J.S.A. 5:12-96(e) by virtue of the fact that a copy of Mr. Hartman's personal check presented to the casino cage on October 1, 1987 was maintained by Resorts and not made immediately available to the Division agent who requested same during the Division's investigation in the instant matter. With respect to the personal check presented to the casino cage on October 7, 1987 Resorts did not maintain a copy of said check since it was returned to the patron prior to deposit in exchange for a casino check. The Division agrees to dismiss the allegations set forth in Count V of Division Complaint No. 88-386 as they relate to the personal check presented on October 7, 1987.

WHEREAS, the parties hereby stipulate and agree that the validity and enforceability of counter check #71012786721 under N.J.S.A. 5:12-101 is not an issue addressed in this action and Respondent specifically preserves its rights with respect to this issue in a separate proceeding.

IT IS THEREFORE consented to and agreed upon by and between the parties that:

A. Respondent Resorts agrees to pay the sum of forty thousand dollars ($40,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.27(a)2, 1.27(c)1, 1.27(c)4, 1.27(a) and (f) relative to Counts I and II of Division Complaint No. 88-386.

B. Respondent Resorts agrees to pay the sum of sixty thousand dollars ($60,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.27(a) and (f) relative to Counts III and IV of Division Complaint No. 88-386.

C. Respondent Resorts agrees to pay the sum of two thousand five hundred dollars ($2,500) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violation of N.J.S.A. 5:12-96(e) relative to Count V of Division Complaint No. 88-386.

D. This Settlement Agreement, upon approval of the Casino Control Commission, is a full and final settlement of all allegations, matters, issues brought or which could have been brought, and claims and possible claims relating to Division Complaint No. 88-386.

Kevin F. O'Toole

Kevin F. O'Toole
Deputy Attorney General
Attorney for Complainant
State of New Jersey,
Department of Law and
Public Safety, Division
of Gaming Enforcement

Date: 10/13/89

Jack Gorny

Jack Gorny, Esq.
Horn, Kaplan, Goldberg,
Gorny and Daniels
Attorneys for Respondent
Resorts International Hotel, Inc.
t/a Resorts Casino/Hotel

Date: 10/13/89

041789/11jm

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-301; 89-271
APPLICATION NO. 074457-22
REGISTRATION NO. 078279-40
OAL DOCKET NO. CCC 06321-89
ORDER NO. 90-18-10

APPLICATION OF LEANDER C. RICE
FOR A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

v.

LEANDER C. RICE,

Respondent.

ORDER

A hearing 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 May 2, 1990,

IT IS on this 11th day of May 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is denied and the registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

ORDER NO. 90-18-10

IT IS FURTHER ORDERED that Leander C. Rice is prohibited from reapplying for or obtaining 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6321-89
AGENCY DKT. NOS. 89-271 and
89-EA-301

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
LEANDER C. RICE,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner
(Robert J. DelTufo, Attorney General of New Jersey, attorney)

Leander C. Rice, respondent, pro se

Record Closed: February 16, 1990 Decided: March 26, 1990

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

STATEMENT OF THE CASE

This matter concerns in part the application of respondent Leander C. Rice for a casino employee license which would permit him to be an alcoholic beverage employee in a licensed casino. By letter report to the Casino Control Commission dated January 4, 1989, the Division of Gaming Enforcement objected to licensure of the respondent, alleging that he had committed the offense of possession of a controlled dangerous substance (cocaine) with intent to distribute, comparable to N.J.S.A. 2C:35-5(b)3. This matter also concerns the complaint of the Division of Gaming Enforcement filed with the Commission on March 13, 1989, seeking revocation of the respondent's hotel employee registration.

These are the issues:

1. Has the respondent engaged in conduct constituting the offense of distribution of a controlled dangerous substance, or possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 2C:35-5, which would be disqualifiers from licensure and from continued casino hotel employee registration, pursuant to sections 86c(1), 90e and 91b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), even if such conduct has not been prosecuted under the laws of this state, as permitted by section 86g of the Act.

2. Has the respondent established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act.

3. Has the respondent, if he has committed an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to sections 90h and 91d of the Act.

PROCEDURAL HISTORY

On June 12, 1989, the Casino Control Commission entered an order denying the casino employee license application of the respondent and revoking his casino hotel empoyee registration. The respondent subsequently filed a petition for rehearing pursuant to N.J.S.A. 5:12-107(d). On August 18, 1989, the Commission ordered that the respondent's petition be granted and further ordered that the contested matters be transmitted to the Office of Administrative Law for a hearing. On August 23, 1989, the Commission transmitted the matters 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 on October 10, 1989. At that time, the hearing was scheduled to be held on February 6, 1990. The hearing was thereafter held as scheduled in Absecon, New Jersey, on February 6, 1990. I subsequently

determined that review of the hearing transcript was necessary, and the record closed when the transcript was received on February 16, 1990.

FINDINGS OF FACT

The material facts are essentially undisputed. The respondent is 32 years old and he resides with his girlfriend in Pleasantville, New Jersey. The respondent finished high school and he also had a two-year vocational course for electronics. He supports his one-year-old daughter.

The respondent holds casino hotel employee registration number 78279-40. Between August 1987 and July 1989, the respondent was employed by Harrah's Marina Hotel and Casino as a bar porter. At the time of the hearing, the respondent had been receiving unemployment benefits for about four months. Between 1978 and 1987, the respondent worked at Lenox China.

Leslie Folks, an investigator with the Atlantic County Prosecutor's office, testified on behalf of the Division of Gaming Enforcement. According to Mr. Folks, he took part in an undercover investigation at Lenox China in 1986. The management of Lenox China had sought the help of the prosecutor's office because employees were noticeably under the influence of alcohol and drugs while working. Mr. Folks began working under cover as an employee at Lenox China on October 28, 1986. It was his testimony that he had a list of suspects and his objective was to find them, gain their confidence, and buy drugs from them.

On October 29, 1986, Mr. Folks met the respondent at work. He asked the respondent if anyone there got high. The respondent told him that everyone does at lunch time: drinking beer or using marijuana or cocaine to get high. When Mr. Folks asked the respondent for drugs the respondent replied that he did not have any but he could get some.

Mr. Folks testified that the very next day, October 30, 1986, the respondent handed him a small glassine bag containing green vegetation which subsequently field tested positive as marijuana. Mr. Folks did not see how the respondent obtained the marijuana and he did not pay the respondent for it. It was his opinion that the respondent gave it to him because he had been asking the respondent for drugs.

On October 31, 1986, Mr. Folks asked the respondent if he could get some cocaine. He testified that the respondent said that the cocaine could be obtained from "Louie." Later, the respondent told Mr. Folks that the respondent would not be able to get cocaine from Louie because Louie did not know him. The respondent said that he would get the cocaine for Mr. Folks. At about 8:10 p.m. on October 31, 1986, Mr. Folks purchased from the respondent a $40 bag of what later field tested positive as cocaine. Mr. Folks did not know what the respondent did with the money which he paid for the cocaine.

Testifying on his own behalf, the respondent stated that he was pretty friendly with some of the other employees at Lenox China. He said that some of the employees did drugs or were drinking on their lunch hour. The respondent admitted that he would drink on his lunch hour but he denied ever doing drugs at lunch. He knew that some people were selling drugs and he could have purchased drugs if he wanted to.

According to the respondent's, he met Mr. Folks at Lenox China in October 1986. He had no idea that Mr. Folks was an undercover officer. The respondent stated that Mr. Folks kept bugging him about getting drugs. The first few times Mr. Folks asked, the respondent said no. The respondent acknowledged that he later told Mr. Folks that "Louie" might have some.

It was the respondent's testimony that near the end of a work day in October 1986, a coworker handed him some loose marijuana in a little bag. It appeared to the respondent to be just enough for one-half a joint. The respondent stated that he gave it right away to the guy who had been bugging him about getting drugs - Mr. Folks. The respondent did not ask him for any money in return.

According to the respondent, at some point thereafter Mr. Folks asked him in the cafeteria if he could get cocaine. The respondent testified that he told Mr. Folks that "Louie" was selling cocaine. When the respondent went up to Louie and told him that the new employee wanted to talk to him, Louie declined. The respondent felt that Louie did not want to talk to Mr. Folks because he did not know him. Instead, Louie handed the respondent a bag of cocaine in the factory cafeteria. It was the respondent's testimony that he brought the bag of cocaine to Mr. Folks and received a payment for it in return. The respondent then brought the money for the cocaine to Louie.

The respondent testified that sometime thereafter, the police came to his mother's house in Galloway Township. After speaking to his mother on the telephone, the respondent turned himself in to the Galloway Township Police. It is undisputed that the respondent was charged in November 1986 with variety of drug possession and distribution charges, as well as with conspiracy to distribute a controlled dangerous substance. On February 20, 1987, the respondent and three others were named in a 20-count indictment alleging a variety of drug offenses. The respondent was named in six counts and charged with unlawful possession of a controlled dangerous substance (cocaine) contrary to N.J.S.A. 24:21-20a(1); unlawful possession of cocaine with intent to distribute, contrary to N.J.S.A. 24:21-19a(1); unlawful distribution of cocaine, contrary to N.J.S.A. 24:21-19a(1); unlawful possession of marijuana with intent to distribute and unlawful distribution of marijuana, contrary to N.J.S.A. 24:21-19a(1); and conspiracy to distribute a controlled dangerous substance, contrary to N.J.S.A. 24:21-24. On August 4, 1987, the respondent retracted a not-guilty plea and entered a plea of guilty to count 12 of the indictment, which charged him with unlawful possession of marijuana with intent to distribute it, contrary to N.J.S.A. 24:21-19a(1).

On September 25, 1987, the respondent was sentenced on the one count of the indictment to a period of probation of three years. He was ordered to pay $30 to the Violent Crimes Compensation Board and a fine of $1,000. The remaining counts of the indictment were dismissed (Exhibit P-1). In the statement accompanying the judgment of conviction, the sentencing judge listed as reasons for the sentence that it was recommended by the prosecutor; the respondent has no other record and the incident is an isolated one where the respondent acted at the initiative of another; and that the fine imposed would punish the respondent. Among the mitigating factors identified by the sentencing judge were that the respondent did not contemplate that his conduct would cause or threaten serious harm; that the respondent has no history of prior criminal activity; that the respondent's conduct was the result of circumstances unlikely to recur; and that the respondent was willing to cooperate with law enforcement authorities (Exhibit P-1).

The respondent testified that he has no other record of arrests. He visits the probation office once a month and his fine of $1,000 is almost paid off. According to the respondent, he is trying to make monthly payments. A letter from the Atlantic County Probation Department was admitted into evidence as exhibit R-1. This letter states that

the respondent is complying with the conditions of his probation. The respondent noted that he was not required to perform community service or undergo drug testing as a result of his conviction.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT:**

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. 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 good character, honesty and integrity. The Act also sets forth grounds for disqualification. Section 90e incorporates the disqualification criteria set forth in section 86 of the Act. Pursuant to section 86c(1) and 86g, the Casino Control Commission shall deny a casino employee license to any applicant who has committed an offense specifically identified as a disqualifier from licensure, even if such offense has not been prosecuted under the criminal laws of this State.

Participation in casino operations as a licensee or registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. N.J.S.A. 5:12-1b(8). It is the intention of the Act to preclude the creation of any property right in any license permitted under the Act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. Pursuant to section 91b of the Act, the Commission may revoke the registration of any registrant who is disqualified on the basis of the criteria contained in section 86 of the Act.

In August 1987, the respondent was convicted upon his plea of guilty to a charge of possession of a controlled dangerous substance (marijuana) with intent to distribute it, contrary to N.J.S.A. 24:21-19a(1), which is comparable to N.J.S.A. 2C:35-5. Under section 86c(1) of the Act, violations of N.J.S.A. 2C:35-5 which constitute a crime of the second or third degree are disqualifiers. In addition, it is undisputed that the respondent in October 1986 sold a quantity of cocaine to an undercover police officer. The distribution of cocaine in a quantity of less than one-half ounce is a crime of the third

degree, pursuant to N.J.S.A. 2C:35-5. Therefore, I **CONCLUDE** that the respondent is subject to denial of his application for a casino employee license and to revocation of his casino hotel employee registration on the basis of his commission of a disqualifying offense.

Section 91d of the Act provides that the respondent's casino hotel employee registration should not be revoked on the basis of his commission of an offense identified in the Act as a disqualifier, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. Similarly, the respondent shall not be denied a casino employee license on the basis of his otherwise disqualifying conduct, provided that he has affirmatively demonstrated his rehabilitation pursuant to section 90h of the Act. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h (the language of section 91d is almost identical) shall be considered:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acqusition 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 license which the respondent seeks would permit him to be hired in a licensed casino as an alcoholic beverage employee. The hotel employee registration which the respondent holds has permitted his employment as a bar porter. The respondent is now 32-years-old and he supports his one-year-old daughter.

When the respondent was 28 years old, he engaged in a conspiracy with fellow employees at Lenox China to distribute controlled dangerous substances. The record reveals that this conduct occurred over a short period of time. Specifically, the respondent took part in a distribution of a small quantity of marijuana and a distribution of a small quantity of cocaine. After pleading guilty to possession of marijuana with intent to distribute, the respondent was sentenced on September 25, 1987, to a period of probation of three years. He was also fined $1,000. The respondent has been meeting with his probation officer on a monthly basis and he is making payments toward his fine.

The respondent was not required to undergo drug testing as part of his probationary sentence. Neither was he required to perform any community service. The sentencing judge considered the respondent's conduct to be the result of circumstances which were unlikely to recur.

If the respondent continues to comply with the terms of his probation, it should end in September 1990. He has no record of arrests before or after the incident which is the subject of this proceeding, and I expect that he will satisfactorily complete his probation. The respondent believes that he will have employment opportunities in the casino industry if he has his credentials and his belief is probably correct. However, has the respondent established his rehabilitation? I am not convinced that he has. This is so specifically because the respondent has yet to understand the seriousness of his criminal conduct. Even though he delivered cocaine to an undercover officer and accepted a payment for the cocaine in return, the respondent asserted that he wasn't directly selling drugs and that someone else was doing the actual selling. While it is apparent that the respondent was acting as a middle man in the transaction, his attitude concerning the transaction nevertheless fails to acknowledge his participation in a serious drug offense.

Based upon the foregoing discussion, I **CONCLUDE** that the respondent has failed to establish his rehabilitation by clear and convincing evidence, within the meaning of sections 90h and 91d of the Casino Control Act. Also based upon the foregoing, I

CONCLUDE that the respondent has failed to establish his good character, honesty and integrity by clear and convincing evidence, within the meaning of sections 99b(2) and 90b of the Act. Thus, the respondent is disqualified from licensure and continued registration for the reasons identified above.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of Leander C. Rice be **REVOKED.** It is further **ORDERED** that the application of Leander C. Rice for a casino employee license permitting him to work in a licensed casino as an alcoholic beverage employee be **DENIED.**

This recommended decision may be adopted, 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, 1990
DATE

Joseph F Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 29 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For petitioner:

P-1 Indictment and judgment of conviction, with sentence worksheet

For respondent:

R-1 Letter from the Atlantic County Probation Department

WITNESSES

For petitioner:

Leander C. Rice
Leslie E. Folks

For respondent:

Leander C. Rice

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-399
APPLICATION NO. 78930-21
OAL DOCKET NO. CCC 03491-89
ORDER NO. 90-8-8

APPLICATION OF SAMUEL ROBB
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 February 21, 1990,

IT IS on this 28th day of February 1990, ORDERED that the initial decision is modified as follows:

> The issue is whether the applicant is disqualified for committing an offense which renders his licensure inimical to the policies of the Casino Control Act and to casino operations under N.J.S.A. 5:12-86(c)(2). While the applicant bears the burden of establishing his qualifications for licensure by clear and convincing evidence, the existence of a disqualifying offense is a matter to be determined from an examination of the record as a whole under the preponderance of the evidence standard. Application of Resorts International, Hotel Inc., for a Casino License 10 N.J.A.R. 244 (1979). Whether the applicant's theft of under $200 from a casino in 1982 was disqualifying required consideration of the so called rehabilitation factors of N.J.S.A. 5:12-90(h). State v. Donna Davis 8 N.J.A.R. 301 (1985). In making that determination, however, it is inaccurate to state, as the ALJ did, that the applicant bears the burden of establishing rehabilitation by clear and convincing evidence

It is neither necessary nor appropriate to ascribe a burden of proof standard as to the existence or lack of rehabilitation in these circumstances. Cf. State v. Waters, Docket No. 84-419 (June 15, 1987). The question, simply put, is whether the applicant's offense, evaluated against all the factors delineated in section 90(h) is one that requires his disqualification. We agree with the ALJ that it does not.

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3491-89
AGENCY DKT. NO. 89-EA-399

SAMUEL A. ROBB,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Samuel A. Robb, petitioner, pro se

Charles F. Kimmel, Deputy Attorney General, for the respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: December 8, 1989 Decided: January 11, 1990

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

PROCEDURAL HISTORY

This matter concerns the letter filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on March 30, 1989, regarding the application for a casino employee license filed by the petitioner, Samuel A. Robb, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Since this letter contained negative information about the petitioner and there was a possibility that his application would not be approved, Mr. Robb requested a hearing. The matter was transmitted to the Office of Administrative

Law on May 11, 1989, 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 by Administrative Law Judge Edgar R. Holmes on August 31, 1989, and at that time the parties agreed that the issues in this matter are:

1. Whether petitioner's licensure is inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(2), because his is alleged to have committed a violation of N.J.S.A. 2C:20-3, a disorderly persons offense.

2. Whether the petitioner possesses the requisite good character, honesty and integrity required for licensure as a casino employee, pursuant to N.J.S.A. 5:12-89b(2).

3. Whether petitioner may demonstrate rehabilitation pursuant to Donna Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985).

After the prehearing conference, the matter was transferred to the undersigned for the purpose of hearing the case and rendering an initial decision.

The hearing took place on December 8, 1989, at the Winslow Township Municipal Court, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** the facts in this matter are not in dispute.

Mr. Robb was licensed as a casino employee in 1981. In 1982, he was employed by the then Golden Nugget Hotel and Casino (Golden Nugget) as a coin cashier. In that capacity, Mr. Robb operated an automatic counting machine. On March 26, 1982, Mr. Robb was arrested at the casino and accused of diverting $6.50 for his own use. The petitioner was charged with theft by unlawful taking, a violation of N.J.S.A. 2C:20-3. The petitioner pled guilty and was convicted of this offense in the Atlantic City Municipal Court on April 19, 1982. Mr. Robb was fined $100.00 plus $25.00 for court costs. In addition, Mr. Robb lost his job at the Golden Nugget.

Thereafter, the Division filed a complaint and recommended that the petitioner's casino employee license be revoked. After a hearing, Administrative Law Judge Richard L. Voliva Jr. issued an initial decision, dated July 1, 1983, in which he concluded that the petitioner's casino employee license should be revoked (R-2). This decision was modified by the Commission in its final order dated September 20, 1983; however, the Commission determined that the petitioner's casino employee license was to be revoked (R-3).

In September 1988, Mr. Robb filed an application for another casino employee license (R-1). In this application, Mr. Robb stated that he wants to work for a casino as a slot attendant and he disclosed the 1982 conviction (R-1). The Division's letter of March 30, 1989 related to this application.

At the hearing, Mr. Robb admitted that he took some coins belonging to Golden Nugget but stressed that he never cheated the customers of the casino. At the time he committed the offense, Mr. Robb was under a great deal of stress since he was having marital problems and his wife had created a substantial number of debts by purchasing with credit cards items that they could not afford. Mr. Robb took the casino money to help pay these bills. After the 1982 incident, he and his wife got a divorce.

After he lost his casino job, Mr. Robb sold real estate for about one and one-half years. On behalf of the petitioner, Leonard F. Albig submitted a letter stating that Mr. Robb worked for him as a real estate salesman and that he was a honest, dependable and reliable employee (P-1). Mr. Robb left this position since he was unable to earn an acceptable salary based on his commissions (P-1). A co-worker at the real estate company also wrote a letter stating that Mr. Robb was a honest person with high personal integrity and was a good employee (P-4). Thereafter, Mr. Robb worked as a driver for a testing laboratory for about two years. He also worked for a while as a driver for a seafood company. Recently, Mr. Robb has been employed by a laundry; however, he lost this job when the laundry burnt down on June 30, 1989. On the date of the hearing, December 8, 1989, Mr. Robb was unemployed and had applied for unemployment benefits.

Mr. Robb regrets that he committed the 1982 offense, and states that he has paid for this mistake. He has not been arrested or convicted of any other criminal offense. Mr. Robb applied for a casino employee license since he wants to work in

the casino industry and he indicated that if his application is approved, he would never steal from the casino or its customers.

On behalf of the petitioner, two of his personal friends wrote letters indicating that they have known him for a number of years and found him to be a honest, trustworthy and hard working individual (P-2, P-3).

CONCLUSIONS OF LAW

In its March 30, 1989 letter, the Division took no position as to the petitioner's application for a casino employee license. At the hearing, Charles F. Kimmel, Deputy Attorney General, on behalf of the respondent, noted that the petitioner had pled guilty to the disorderly persons offense and that more than five years have passed since his initial license was revoked.

Based on the petitioner's admissions during the hearing, I **CONCLUDE** that the Division has shown a violation of N.J.S.A. 2C:20-3, which is not an automatic disqualification pursuant to N.J.S.A. 5:12-86c(1). In order to decide whether this conduct is inimical pursuant to N.J.S.A. 5:12-86c(2), it is necessary to consider the circumstances underlying the incident as well as the petitioner's subsequent conduct, i.e., his rehabilitation. Donna Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244 (1979).

Therefore, it is appropriate to look at the standards set forth in the Casino Control Act governing rehabilitation for purposes of licensure:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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 recommendations of persons who have or have had the applicant under their supervision. [N.J.S.A. 5:12-90h]

As to rehabilitation, the petitioner was a mature person at the time he committed the disorderly persons offense; however, this is his only criminal offense. Based on the facts, it appears that Mr. Robb took the coins belonging to the casino because of the substantial debts created by his former wife. As a result of this incident, Mr. Robb was arrested, he lost his casino job and his casino employee license was revoked. All of this has had a substantial effect on Mr. Robb and I accept his statement that if his casino employee license is restored there will be no repetition of this or any similar criminal conduct.

In view of the facts, and especially the fact that the disorderly persons offense occurred more than five years ago, I **CONCLUDE** that Mr. Robb has shown by clear and convincing evidence that he is rehabilitated pursuant to N.J.S.A. 5:12-90h, and therefore I **CONCLUDE** that Mr. Robb's action does not now constitute an inimical offense pursuant to N.J.S.A. 5:12-86c(2).

Also based on the facts in this matter, I **CONCLUDE** that the petitioner has now shown by clear and convincing evidence that he has the necessary good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2).

Therefore, I **ORDER** that the application of Samuel A. Robb for a casino employee license be approved.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 11, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

1/12/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 17 1990
DATE

Janice LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

caj

886

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Letter from Leonard F. Albig, dated September 6, 1989

P-2 Letter from Dave McKenna

P-3 Letter from Joseph Gresh

P-4 Letter from Leonard Jagielski, dated October 6, 1989

For the Respondent:

R-1 Personal History Disclosure Form - 2A filed by Samuel A. Robb

R-2 Initial Decision in the matter of Division of Gaming Enforcement v. Samuel A. Robb, OAL DKT. CCC 1024-83 (July 1, 1983)

R-3 Final Order in the matter of Division of Gaming Enforcement v. Samuel A. Robb, dated September 20, 1983

WITNESSES:

For the Petitioner:

Samuel A. Robb

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-243
APPLICATION NO. 021466-21
OAL DOCKET NO. CCC 301-89
ORDER NO. 90-8-4

APPLICATION OF FRANCINE B. RUTLEDGE
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 February 21, 1990,

IT IS on this 27th day of February 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /RM

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

TRANSCRIPT
ORAL INITIAL DECISION
STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DKT. NO. CCC 301-89
AGENCY DKT. NO. 89-EA-243

FRANCINE B. RUTLEDGE,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Charles R. Maratea, Esq., for petitioner (Cape-Atlantic Legal Services)

James J. Armstrong, Deputy Attorney General for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: December 28, 1989 Decided: January 8, 1990

This is a transcript of the administrative law judge's oral initial decision rendered pursuant to *N.J.A.C.* 1:1-18.2.

BEFORE **RICHARD J. MURPHY,** ALJ:

This is an oral opinion in the case of Francine B. Rutledge versus the State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement. The Docket No. is CCC 301-89 and the appearances are on behalf of the applicant, Charles P. Maratea, that's M-A-R-A-T-E-A, of Cape-Atlantic Legal Services, and DAG James Armstrong.

The hearing has been held on December 28th and the record is going to close that date, and that is also going to be the date of the, well, probably not the date of the decision, but the date of the opinion.

For the statement of the case this a renewal, this is application for renewal of a casino employee license by Francine B. Rutledge who is currently employed as a floor person in craps. What was the casino agin? I'm sorry, which casino?

MR. MARATEA: Playboy Hotel Casino.

At Playboy. The Division of Gaming Enforcement objects to renewal of this application based on Ms. Rutledge's receipt, unlawful receipt of unemployment benefits between November 1981 and March f 1982. Ms. Rutledge contends that she, even if disqualified, has proved rehabilitation and in addition to that has proved her necessary good character, honesty and integrity which are required for continued licensure under the act.

I just have the procedural history at this point. This case was transmitted to the Office of Administrative Law on January 17, 1989. Prehearing was held on April 3, 1989 and we had an initial hearing scheduled for July 17th of 1989, which was adjourned in order to allow Ms. Rutledge to get an attorney, which she eventually was able to do. We have had a couple of - I think we had a couple of additional adjournments, which I will fill in as part of the procedural history, and we are here today, which is really what matters.

In terms of findings of fact, there is no dispute as to the important facts, the material facts necessary to decide this case. Ms. Rutledge admitted and admitted at the time of the offense as soon as the offense was discovered that she did unlawfully receive unemployment benefits while employed for the period of November 16, 1981 through March 1, 1982. She explained, let me just give the amount, the amount of that was $2,128, correct?

MR. ARMSTRONG; That's correct.

At the time of receiving these benefits she had been laid off by a casino and had incurred heavy obligations of a financial nature in the way of mortgages and other expenses. She lists no real mitigating factors as to the - as to the receipt of the unemployment benefits other than financial need which was of a pressing nature.

The evidence also shows that as of today at least all of that overpayment as well as fines and penalties has been paid off, although it did take several years to accomplish that.

At the time of the offense Ms. Rutledge was 30 years of age and did not have then and does not have now any children or other dependents so far as I know. She admitted to the Division of Unemployment and later to the Division of Gaming Enforcement that she had unlawfully received unemployment benefits and was aware at the time of the receipt of those benefits that she was doing something contrary to law, but felt that financial necessity forced her to resort to that method.

She decided not to declare bankruptcy and - in fear of losing her house and ultimately was able to pay off all her creditors including, and I think most importantly, the State of New Jersey. She really lists no mitigating factor for the offense other than financial need as I have set forth:

In terms of her work record, we have had testimony from Ms. Rutledge and from her supervisors and fellow employees, namely Michael Watson and Diane Tarone, who have attested as to her good character, honesty and integrity, and beyond that as to their relationship with her on the job and off the job. Mr. Watson testified that he has never had any problems on the job whatsoever with MS. Rutledge, and Ms. Tarone also testified that she was a great supervisor and that she regarded her a something as a sister and are quite close friends.

We also have a letter from Betty Toy, T-O-Y, who states that Ms. Rutledge assisted in helping her son when he contracted AIDS and came by regularly and gave the family what assistance she could. There is further evidence in that record that Ms. Rutledge has been active in assisting senior citizens in Berlin, and that she also has been involved in trying to better herself by academic courses as well as undertaking other games of the casino. There is no dispute as to those facts as set forth and I so **FIND.**

The first issue is whether petitioner is disqualified from holding a Casino Employee License under *N.J.S.A. 5:12-86c(1).*

The second issue - I am rearranging the prehearing order a little bit - is whether the petitioner may demonstrate rehabilitation to the Section 90h of the Casino Control Act notwithstanding the disqualification.

The third issue is whether the petitioner possesses the requisite good character, honesty, integrity for casino employee licensure pursuant to *N.J.S.A. 5:12-89b(2).*

The next section of the opinion is discussion and conclusions. As tot he arguments of the parties, petitioner contends that although her receipt of unemployment benefits was intentional and not an error in any way and further was not the result of any extenuating or mitigating circumstances other than financial need and layoff from the casino industry, petitioner maintains that her excellent work record in the interim, intervening years rather, as well as her efforts to voluntarily payoff this loan, which she has done as of today - and I note the fact that the voluntary payment was limited to $400 and involuntarily through income tax benefit withholding and other withholdings the State recoup all its claimed debt from her.

Petitioner claims that in the seven years and nine months since the offense her work record as well as her activities in the community, her efforts to better her education constitute rehabilitation and also demonstrate her good character, integrity and honesty sufficient to allow the renewal of her application.

The Division of Gaming Enforcement objects to the renewal of this application based on the severity as well as the intentional nature of the offense, and emphasizes that the debt was only paid off as of today or the last few days and then was only paid off involuntarily for the most part through deductions by the State and other means.

The Deputy Attorney General emphasized that the situation of debt in which Ms. Rutledge found herself in September of 1981 was due to her financial situation at that time which was not complicated by the care and expense of any dependents, but rather was intentional in the sense of acquiring a house and other expenses.

Deputy Attorney General also notes that Ms. Rutledge's age was that of 30 years of age at the time of the offense and claims that this further militates against any finding of rehabilitation or of good character, honesty and integrity.

As to the issue of statutory disqualification, the applicant or petitioner does not contest that this offense is statutorily disqualifying under *N.J.S.A. 5:12-86c(1),* and I **CONCLUDE** that it is a disqualifying offense.

As to whether Ms. Rutledge has affirmatively established her rehabilitation I have to consider the following factors under *N.J.S.A. 5:12-90h*:

Factor number one, the nature and duties of the position applied for. Ms. Rutledge occupies a position of great responsibility and trust, in fact maybe one of the more responsible and sensitive positions in a casino, that of craps floor person. I think she also is getting involved in some other games, so I would characterize the nature of the duties of the position as those of high sensitivity and high responsibility.

Factor number two, the nature and seriousness of the offense or conduct. Ms. Rutledge concedes that the offense was a serious one and indeed received unlawful receipt of unemployment benefits even under difficult circumstances is a serious offense, and it is tantamount to theft by deception, and is something that the State cannot tolerate or condone, especially of one who occupies such a position. So the nature and seriousness of the offense I would have to characterize again as serious.

The circumstances under which the offense occurred or conduct occurred is the next factor. And I note for the record that the petitioner has cited no mitigating circumstances other than her layoff from the casino industry, her level of debt which forced her from the financial point of view into the impalpable choice of either declaring bankruptcy or losing her home and facing other problems. While she choose to in effect take a loan from the State in the form of unemployment benefits, I don't know if she attempted at that time to pay it back, but ultimately her receipt of these benefits was detected and a demand for repayment was made.

The date of offense of conduct is another factor to be considered and this occurred exclusively and repeatedly between November 16th of 1981 and March 2, 1982. At the time of the offense as noted the applicant was 30 years of age and is 38 today, which is also a factor to be considered.

The offense can fairly be characterized as isolated - excuse me, as repeated in the sense that that was a repeated and continuing unlawful receipt of unemployment benefits at least foe the period of November 1981 through March of 1982.

An additional factor can be considered by the Casino Control Commission in assessing an application for renewal is social conditions which may have contributed to the offense or conduct, and the applicant cites no conditions other than lay-off from the casino industry and heavy level of debt. She had no dependents at the time and cites no other family obligations which may have contributed to this offense.

She offers by way of evidence of rehabilitation, which is the final factor to be considered, her assistance to senior citizens in the community, as well as to the Toy family, and also stresses her efforts to go on and better her education and assume more responsibility in the casino industry.

This is not really an easy case because of the fact that receipt of unemployment benefits is a serious matter. It's essentially, to use the vernacular, ripping off the State, and in this case it was done in a fairly deliberate way, albeit under some financial stress at the time.

Had this conduct occurred two years ago, a year ago, three years ago I would be almost forced to conclude that the required rehabilitation had not been shown by this applicant, but given the fact that seven years have passed and repayment has been made, and further that her record in the casino industry is excellent without any further complaint or any problem and is supported by testimony of persons still in the casino industry who have knowledge of her, I am going to **CONCLUDE** as a matter of law that she has shown the requisite rehabilitation.

The final hurtle that any applicant has to make is that of good character, honesty and integrity, and again I **FIND** that it is a close question in this case, because I think the receipt of unemployment benefits is a serious offense and it is one that sometimes is dismissed by people as being a technical violation or an inadvertent violation, but in reality people who do take unemployment benefits under false pretenses or in an unlawful way are depleting an extremely critical fund that the State maintains to protect people when they get into difficult circumstances.

So in terms of the offense it is a serious offense and in this instance it was repeated over a number of months between November and March of 1982. However, in this case I am satisfied that even though the offense is serious, its nature was repeated at least for that period, that the applicant's record in the casino industry is sufficiently excellent to support a conclusion that she has demonstrated

her good character, honesty, and integrity. I think she has shown that through the evidence of her excellent work in the industry after this date.

This situation in 1981 strikes me as being one of those regrettable decisions that people make and then have to live with later on, but due to the passage of what I consider to be a long period of time during which she has shown her worth to the casino industry and performed flawlessly my conclusion is that she be allowed to continue to work in the casino industry, and I order that her license be renewed.

What I will do is attach all the evidence, I am not going to go over it now on the record, and any exceptions you have, I assume Mr. Armstrong, you can direct to the Casino Control Commission. At that point you will have the opinion, all right.

I don't want to make you wait over New Years, but I think in this case that the passage of time you have proven yourself. I hope the Casino Control Commission does the same thing.

END OF TRANSCRIPT

I, Clair Talmage, certify that the foregoing is a true and accurate transcript, to the best of my ability, of Judge Murphy's oral decision rendered in the above matter on December 28, 1989.

January 8, 1990
DATE

Clair Talmage
CLAIR TALMAGE

This oral decision may be adopted, 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 oral decision shall become a final decision in accordance with *N.J.S.A.* 52:14B-10.

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 11 1990

DATE

OFFICE OF ADMINISTRATIVE LAW

/ct

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 90-227; 88-EA-309
APPLICATION NO. 070941-21
REGISTRATION NO. 094877-40
OAL DOCKET NO. CCC 04424-89
(08890-88 ON REMAND)
ORDER NO. 90-16-7

APPLICATION OF DARLENE O. SAMUEL
FOR A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

ORDER

v.

DARLENE O. SAMUEL,

Respondent.

A hearing 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 April 18, 1990,

IT IS on this 25th day of April 1990, ORDERED that the initial decision is modified as follows:

> On pages 5 to 6 of the initial decision the ALJ considered whether the respondent/applicant timely reported her earnings to the Atlantic County Department of Social Services. However, consideration of this issue was unnecessary since the respondent/applicant was convicted of the offense of theft by deception on March 2, 1987. That conviction is res judicata for the purposes of this proceeding.

ORDER NO. 90-16-7

IT IS FURTHER ORDERED that the application is denied and the registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Darlene O. Samuel is prohibited from reapplying for or obtaining 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /RM
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4424-89

(ON REMAND CCC 8890-88)

AGENCY DKT. NO. 88-EA-309; 90-227

DARLENE SAMUEL,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Darlene Samuel, petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: January 16, 1990 Decided: March 5, 1990

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

STATEMENT OF THE CASE

This matter concerns in part the application of the petitioner for licensure as a casino employee, which would permit her employment in a licensed casino as a teller. By letter report to the Casino Control Commission dated June 14, 1988, the Division of Gaming Enforcement objected to the petitioner's licensure, based in part upon her conviction on March 20, 1987, of theft by deception in the 3rd degree, contrary to N.J.S.A. 2C:20-4. This matter also concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on December 29, 1989. The Division seeks revocation of the respondent's casino hotel employee registration, based upon her 1987 conviction of theft by deception. These are the issues:

1. Has the petitioner been convicted of theft by deception in the 3rd degree, contrary to N.J.S.A. 2C:20-4, which would be a disualifier from licensure and from continued registration, pursuant to sections 86c(1), 90e and 91b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

2. Does the petitioner possess the requisite good character, honsety and integrity for casino employee licensure, pursuant to sections 89b(2) and 90b of the Act.

3. Does the petitioner possess the requisite financial stability, integrity and responsibility for casino employee licensure, pursuant to sections 89b(1) and 90b of the Act.

4. Has the petitioner, if she has been convicted of an otherwise disqualifying offense, affirmatively established her rehabilitation, pursuant to sections 90h and 91d of the Act.

PROCEDURAL HISTORY

The petitioner's request for a hearing on her license application was sent to the Casino Control Commission on November 16, 1988. On December 7, 1988, the Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. (OAL DKT. NO. CCC 8890-88). A prehearing conference was held by Administrative Law Judge Beatrice S. Tylutki on January 26, 1989.

The petitioner subsequently failed to appear at a hearing scheduled before Administrative Law Judge Lillard E. Law on April 13, 1989. However, the petitioner appeared before the Casino Control Commission and by order dated June 2, 1989, the Commission remanded the matter to the Office of Administrative Law (OAL) for a hearing on all issues. The remanded matter was filed with OAL on June 16, 1989, and a prehearing conference was thereafter conducted on August 21, 1989.

The hearing was held as scheduled on November 14, 1989. At that time, the Division of Gaming Enforcement moved for inclusion of revocation of the respondent's

casino hotel employee registration as an issue to be considered. According to the Division, a complaint had not yet been filed through inadvertence. After fully discussing the implications of this request with the parties, I was satisfied that the petitioner understood the motion and consented to inclusion of revocation of her casino hotel employee registration as an issue. On December 29, 1989, the Division's revocation complaint was filed with the Casino Control Commission. The Commission's notification of this filing was received on January 16, 1990. The record closed on that date.

FINDINGS OF FACT

Many of the material facts in this matter are undisputed. The petitioner is a 27-year-old resident of Atlantic City, New Jersey. She lives with and supports her three daughters. The petitioner holds casino hotel employee registration number 94877-40. Since June 1989, the petitioner has been employed in the housekeeping department at the TropWorld Hotel and Casino.

Between December 1980 and June 1981, the petitioner worked as a porter at Resorts International Hotel and Casino. She left this job when she became pregnant. After a period of unemployment, the petitioner worked as a maid at the Deauvelle Hotel in Atlantic City between June and November 1982. She left this job as a result of another pregnancy. From July to September 1983, the petitioner worked as a maid at the Lafayette Hotel. She was then a clerk typist for A Woman's World from May 1984 until May 1985.

It was the petitioner's testimony that she applied for welfare benefits in 1985. She stated that she was not working at the time she made the application. On May 17, 1985, the petitioner began working at the White Castle Restaurant at Kentucky Avenue and the Boardwalk in Atlantic City (Exhibit R-6). However, she continued to receive welfare benefits. On August 26, 1985, the petitioner signed a redetermination of benefit eligibility at the Atlantic County Department of Social Services (Exhibit R-1). This redetermination did not reveal her employment at White Castle, and it indicates that she had received no income from employment.

The petitioner continued to receive welfare benefits while working at White Castle. On December 17, 1985, the petitioner signed an interim redetermination (Exhibit

R-2). For this redetermination, the petitioner reported a change of address. Although this form provides a space for reporting the receipt of money, the petitioner did not reveal on this form her receipt of earnings from her employment at the White Castle Restaurant.

In August 1986, the Atlantic County Department of Social Services contacted White Castle and asked that the petitioner's wages from employment be verified (Exhibit R-6). White Castle responded with a verfication showing the petitioner's weekly earnings at the restaurant from May 1985 through August 1986. The welfare agency then calculated that the petitioner had received an overpayment of welfare benefits in the amount of $6,708. In addition, she had received a Medicaid overpayment of $769.21 and a food stamp overissuance of $1,971 (Exhibit R-7).

On September 23, 1986, the petitioner signed an agreement to repay the Atlantic County Division of Welfare the sum of $6,708 at the rate of $10 per week (Exhibit R-5). The agreement to repay benefits received from May 1985 until August 1986 stated that the petitioner had received the overpayment because she had failed to notify the agency in a timely manner of her employment at the White Castle Restaurant. On November 13, 1986, the petitioner was indicted on one count of theft by deception in the 3rd degree, contrary to N.J.S.A 2C:20-4 (Exhibit R-3). The indictment alleged that the petitioner had purposely obtained welfare benefits in excess of $500 from the Atlantic County Division of Weflare by deception, in that she had created or reinforced the false impression that she was not employed when in fact she was gainfully employed. On January 5, 1987, the petitioner entered a plea of not guilty to the indictment.

The petitioner retracted her plea of not guilty and entered a plea of guilty to the indictment on March 2, 1987. On March 20, 1987, the petitioner was sentenced to four years probation and ordered to pay restitution in the amount of $9,448.21, at a rate of $25 per month. She was also ordered to maintain employment and to pay $30 to the Violent Crimes Compensation Board (Exhibit R-4).

The petitioner testified that she reported to probation as scheduled for a while. However, after the deaths of some close family members, she stopped reporting. According to the petitioner, she "just didn't care." The petitioner testified that she was subsequently brought into court for violating the terms of her probation. At that time, the terms of her restitution repayment were changed to require that she pay $50 per

month. As of February 21, 1989, the Atlantic County Probation Department reported that the petitioner had repaid a total of $199 toward her restitution (Exhibit R-8). According to the petitioner, she has been making the restitution payment regularly since it was changed to $50 per month in 1989.

The petitioner testified that she attended cage cashier school in 1986. This preceded her indictment for theft by deception. She also worked at the White Castle Restaurant until 1988, when her brother died. According to the petitioner, she felt too much pressure after that and she quit the restaurant job. She now works days at the TropWorld, cleaning guest rooms. She has been working 40 hours per week but feels that her hours may be cut back to 32 per week. The petitioner stated that she has had no problems with this employment. While she is at work, her oldest daughter makes sure that the younger children go to their babysitter after school. The petitioner also noted that she will be residing in a housing project which requires that residents give 10 hours of community service per week, helping either the elderly or children.

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 petitioner timely reported her earnings from employment to the Atlantic County Department of Social Services. As noted above, the petitioner twice signed forms at the welfare agency which provided an opportunity for her to report her earnings from employment (Exhibits R-1 and R-2). However, in neither instance did the petitioner reveal on these forms that she had earnings from employment. In addition, the petitioner signed an agreement to repay (Exhibit R-5) which contains her admission that she had failed to notify the agency in a timely manner of her employment at the White Castle Restaurant. Finally, the petitioner entered a plea of guilty to the indictment which charged her with purposely obtaining the welfare benefits by creating or reinforcing the false impression that she was not employed.

The petitioner admitted in her testimony that neither the redetermination application nor the interim redetermination (Exhibits R-1 and R-2) disclosed her employment at the White Castle Restaurant. Nevertheless, she maintained that she had reported this employment when it began in May 1985. She noted that she had been making

$4.00 per hour there and she felt that she would still be eligible for welfare benefits. According to the petitioner, the forms were filled out by the welfare worker and she just signed them. The petitioner also acknowledged signing the agreement to repay.

The petitioner testified that she had originally entered a plea of not guilty to the indictment for theft by deception because she had reported the income. However, her public defender was subsequently switched and the new attorney recommended that she plead guilty. Although she said that she reported her income, no records of such a report could be found. She felt her attorney was not giving her support and when he urged her to plead guilty she did.

I do not accept the petitioner's version of events. The county welfare agency continued to pay her benefits while she maintained her employment. At any time, she could have again reported her employment when it became apparent to her that her earlier report had gone unheeded. That she did not take the opportunity on subsequent redeterminations to make clear that she was employed seriously places in doubt her assertion that she had earlier reported that she had earnings from employment. She thereafter signed a statement admitting to the welfare agency that she had not timely reported her employment. These events, taken together with her plea of guilty to the charge of theft by deception, prevent me from believing the petitioner's uncorroborated testimony that she had reported her employment in May 1985. Consequently, I further **FIND AS FACT** that she did not.

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence her individual qualifications. Sections 89b(1) and 90b of the Act require an applicant for a casino employee license to demonstrate by clear and convincing evidence her financial stability, integrity and responsibility. By the same burden, sections 89b(2) and 90b of the Act require an applicant for a casino employee license to demonstrate her good character, honesty and integrity.

The Act also sets forth grounds for disqualification. Section 90e incorporates the disqualification criteria set forth in section 86 of the Act. Pursuant to 86c(1), the

Casino Control Commission shall deny a casino employee license to any applicant who has been convicted of an offense specifically identified as a disqualifier from licensure.

Participation in casino operations as a licensee or registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. N.J.S.A. 5:12-1b(8). It is the intention of the Act to preclude the creation of any property right in any license permitted under the Act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. Pursuant to section 91b of the Act, the Commission may revoke the registration of any registrant who is disqualified on the basis of the criteria contained in section 86 of the Act.

In March 1987, the petitioner was convicted upon her plea of guilty to a charge of theft by deception in the 3rd degree, contrary to N.J.S.A. 2C:20-4. This is an offense specifically listed under section 86c(1) of the Act as a disqualifier. Therefore, I **CONCLUDE** that the petitioner is subject to denial of her application for a casino employee license and to revocation of her casino hotel employee registration on the basis of her conviction of a disqualifying offense.

Section 91d of the Act provides that the petitioner's casino hotel employee registration should not be revoked on the basis of her conviction of an offense identified in the Act as a disqualifier, provided that she has affirmatively demonstrated her rehabilitation by clear and convincing evidence. Similarly, the petitioner shall not be denied a casino employee license on the basis of her otherwise disqualifying conviction, provided that she has affirmately demonstrated her rehabilitation pursuant to section 90h of the Act. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h (the language of section 91d is almost identical) shall be considered:

(1) The nature and duties of the position applied for;
(2) The nature and seriousness of the offense or conduct;
(3) The circumstances under which the offense or conduct occurred;
(4) The date of the offense or conduct;
(5) The age of the applicant when the offense or conduct was committed;
(6) Whether the offense or conduct was an isolated or repeated incident;

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

(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.

The license which the petitioner seeks would permit her employment on the floor of a casino as a teller. Her hotel employee registration permits her present employment in the housekeeping department at the TropWorld Casino Hotel. She is now 27 years old and is the mother of three children.

When the petitioner was 23 and 24 years old, she received welfare benefits to which she was not entitled. This occurred between May 1985 and August 1986. As a result of her failure to report earnings from employment, the petitioner received various welfare benefits valued in excess of $9,000. Although she pled guilty to the charge of theft by deception in the 3rd degree, the petitioner contended at the hearing that she had made a timely report of her employment to the welfare agency. I have found the facts in this matter to be to the contrary.

The petitioner's offense occurred over a substantial period of time. However, the record in this matter does not reveal that the petitioner has any other record of arrests or convictions. It is also fair to infer from the evidence in the record that the petitioner engaged in the unlawful conduct which led to her conviction for theft by deception because of her economic situation.

In addition to being required to make restitution, the petitioner was also placed on probation for a period of four years. She failed to comply with the terms of probation and her restitution requirement was modified from $25 per month to $50 per month. As of February 1989, the petitioner had paid a total of $199 toward her restitution, with a balance owing of $9,249.21. According to the petitioner, she has subsequently been making her payment of $50 per month.

The petitioner is a high school graduate. She has also taken vocational

courses and completed a course in word processing. In the casino field, the petitioner attended a course for cage cashiers. All of this training occurred prior to her indictment for theft by deception. Following her conviction, the petitioner's sporadic reporting to the Atlantic County Probation Department led to her being required to appear in court and her restitution schedule was readjusted.

The petitioner's serious efforts toward rehabilitation did not begin until 1989, after having violated the terms of her probation. The restitution remaining to be paid is quite large. Her probation is likely to continue into 1991. It would be well to encourage the petitioner's efforts toward rehabilitation. Unfortunately, her lack of candor during the hearing concerning her commission of the disqualifying theft by deception offense constitutes significant evidence that she has not yet achieved rehabilitation. I am not convinced that she has.

Based upon the foregoing discussion, I **CONCLUDE** that the petitioner has failed to establish her rehabilitation by clear and convincing evidence, within the meaning of sections 90h and 91d of the Casino Control Act. Also based upon the foregoing, I **CONCLUDE** that the petitioner has failed to establish her good character, honesty and integrity by clear and convincing evidence, within the meaning of sections 89b(2) and 90b of the Act. The unrefuted evidence in the record establishes that the petitioner is gainfully employed and is making regular restitution payments. Notwithstanding the foregoing conclusions, I further **CONCLUDE** that the petitioner has established her financial stability, integrity and responsibility pursuant to sections 89b(1) and 90b of the Act. Nevertheless, the petitioner is disqualified from licensure and continued registration for the reasons identified above.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of Darlene Samuel be **REVOKED.** It is further **ORDERED** that the application of Darlene Samuel for a casino employee license permitting her to work in a licensed casino as a teller be **DENIED.**

This recommended decision may be adopted, 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 5, 1990
DATE

Joseph J Fiddler
ALJ

Receipt Acknowledged:

3/6/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 8 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For the petitioner:

None

For the respondent:

R-1	Welfare redetermine application, dated August 26, 1985
R-2	Welfare interim redetermination, dated December 17, 1985
R-3	Indictment
R-4	Judgment of conviction
R-5	Repayment agreement
R-6	Overpayment report
R-7	Welfare investigation summary
R-8	Letter from Atlantic County Probation Department, dated February 21, 1989
R-9	Personal history disclosure form

WITNESSES

For the petitioner:

Darlene Samuel

For the respondent:

Darlene Samuel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-415
APPLICATION NO. 077298-21
OAL DOCKET NO. CCC 04661-89
ORDER NO. 90-19-12

APPLICATION OF JOSEPH M. SCIACCA
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 May 9, 1990,

IT IS on this 11th day of May 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4661-89

AGENCY DKT. NO. 89-EA-415

JOSEPH M. SCIACCA,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Timothy P. Maguire, Esq., for petitioner (D. William Subin, attorney)

R. Lane Stebbins, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: November 9, 1989 Decided: March 30, 1990

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

This matter concerns the application of Joseph M. Sciacca (petitioner) for licensure as a casino employee, which would permit his employment in a licensed casino in a gaming-related position. By letter report to the Casino Control Commission dated April 26, 1989, the Division of Gaming Enforcement objected to licensure of the petitioner, alleging that he has committed the offense of distribution of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-5, which would be a disqualifier from licensure under section 86c(1) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The Division does not seek to revoke the petitioner's casino hotel employee registration. These are the issues:

1. Whether petitioner's conduct with regard to the distribution of CDS, contrary to N.J.S.A. 2C:35-5, constitutes a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86c(1), despite the fact that the charge was dismissed by the Superior Court of New Jersey, Gloucester County, as permitted by section 86g of the Casino Control Act?

2. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to sections 89b(2) and 90b of the Act?

3. Whether petitioner, if he has committed an otherwise disqualifying offense, has affirmatively established his rehabilitation by clear and convincing evidence, pursuant to section 90h of the Act.

PROCEDURAL HISTORY

On June 7, 1989, the Casino Control Commission received the petitioner's request for a hearing concerning his license application. On June 26, 1989, 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. On August 8, 1989, Administrative Law Judge Lillard E. Law conducted a prehearing conference. The hearing was thereafter held before the undersigned on November 9, 1989, in Absecon, New Jersey. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The petitioner is a 26 year old resident of Clementon, New Jersey. On March 17, 1985, while the petitioner was a student at Glassboro State College, he sold approximately 1/4 ounce of marijuana to a police informant for the sum of $40. The Glassboro campus police obtained and executed a search warrant for the petitioner's campus apartment. Pursuant to this search, two plastic bags of suspected marijuana and three plastic bags of mushrooms were seized, along with scales, cash and various drug paraphernalia (Exhibit R-5).

The $40 used for the informant's marijuana purchase was found in the petitioner's wallet. He was placed under arrest and charged with possession of marijuana over 25 grams, contrary to N.J.S.A. 24:21-20(a)4; possession of psilocybine (mushrooms), a controlled dangerous substance, contrary to N.J.S.A. 24:21-20(a)1; possession of marijuana and psilocybine with the intent to distribute, contrary to N.J.S.A. 24:21-19(a)1; distribution of a controlled dangerous substance, contrary to N.J.S.A. 24:21-19(a)1; and possession of drug paraphernalia, contrary to N.J.S.A. 24:21-47 (Exhibits R-2, R-3A and B). The Glassboro State College Security Department forwarded three bag of suspected psilocybine to the New Jersey State Police for examination (Exhibit R-7A). On

April 15, 1985, the State Police issued a laboratory report which concluded that two of the specimens analyzed were psilocybine, weighing 16.7 and 4.83 grams. The third specimen was not analyzed (Exhibit R-7B).

The Grand Jury of the State of New Jersey, for the County of Gloucester, thereafter entered an indictment against the petitioner which charged him with one count of possession of a controlled dangerous substance (psilocybine), contrary to N.J.S.A. 24:21-20(a)1; and one count of possession of psilocybine with intent to distribute, contrary to N.J.S.A. 24:21-19(a)1 (Exhibit R-4). On July 15, 1985, the petitioner appeared before the Superior Court and Judge Alvino granted a conditional discharge as to the possession of psilocybine count of the indictment. The charge of possession of psilocybine with intent to distribute was dismissed (Exhibit R-4). Following the petitioner's successful completion of the conditional discharge program, the remaining charge of possession of a controlled dangerous substance was dismissed in February 1986 (Exhibit P-1).

Testifying at the hearing, the petitioner acknowledged that he had sold a quantity of marijuana for $40 prior to his arrest on March 17, 1985. He also acknowledged that he had intended to sell the quantities of marijuana and mushrooms (psilocybine) which were seized by the campus police when they executed the search warrant. According to the petitioner, he did not use these drugs himself. He had not yet sold any of the mushrooms because he had just received them. It was the petitioner's candid explanation that he was selling these controlled dangerous substances because he had been a gullible and easily led person at the time and the crowd which he associated with engaged in that type of activity. In addition, the petitioner admitted that he sold the drugs because he needed the money.

The petitioner testified that he successfully completed the conditional discharge program and has had no arrests or charges since March 1985. He had been expelled from Glassboro State College following his arrest. After the charges against him were dismissed, the petitioner requested a hearing at the College concerning his re-entrance. On June 18, 1986, the campus hearing board voted to recommend the petitioner's readmission (Exhibit P-2).

The petitioner testified sincerely that his conduct in 1985 was very stupid and it reflected his maturity level at the time. According to the petitioner, he learned a great lesson from his mistake and he believes that he is now a responsible individual who has something positive to offer. His unlawful conduct will not happen again.

The petitioner has had several jobs since 1985. For a time, he helped his brother operate a business in Florida. Later, the petitioner returned to New Jersey and supervised a warehouse for the Blackwood Medical Supply Company. The petitioner also worked at the Heartthrob Cafe. Although he started as a valet parker, he was later promoted to kitchen steward and his duties included ordering supplies for the business.

The petitioner holds casino hotel employee registration number 82745-40. He also was issued a temporary casino employee license on June 8, 1988. Beginning in April 1988, the petitioner was employed by the Atlantis Hotel and Casino as a clerk in its payroll and scheduling department. His duties there included entry of payroll hours and verifying time sheets for dealers and floor people. Sharon Corcoran was the petitioner's supervisor at the Atlantis Hotel and Casino and she testified on his behalf. According to Ms. Corcoran, the petitioner had great potential and worked very well with other people. She selected him for his technician position over eight other employees. In Ms. Corcoran's opinion, the petitioner has the highest integrity and he would be an asset to the casino industry.

The petitioner testified that his position was dissolved and he was laid off when the Atlantis property was sold. He then went to work for George Foley, owner of AlphaGraphics print shop in Haddonfield, New Jersey. A letter from Mr. Foley was admitted into evidence as Exhibit P-4. The petitioner worked for him from June through September 1989. According to Mr. Foley, the petitioner was a consciencious and attentive employee who was always above reproach. The writer gives the petitioner his highest recommendation.

The petitioner testified that he is now working at the Paper Shop in Cherry Hill, New Jersey. He is an assistant manager of the business and he enjoys it very much. The petitioner is also involved in video taping various functions, including weddings, and it is his goal to eventually work in the communications or entertainment aspects of the casino industry.

The petitioner testified that he is also active in his community church. His contributions include helping the church plan all year long for its annual carnival. A letter from Robert J. Jacobs, chairman of the carnival public relations committee was admitted into evidence as Exhibt P-3. Mr. Jacobs noted that the petitioner has

volunteered his assistance for the past four years and "he has always been nothing other than professional and highly personable." The petitioner's father, Vito Sciacca, testified on his behalf. He noted that he and his wife were devastated by the petitioner's arrest in 1985. In his opinion, the consequences of the arrest tormented the petitioner. Since that time, the petitioner has changed by becoming a more caring individual. He wants to help others. Mr. Sciacca noted that his son loved the responsibility which he had with his job at the Atlantis Hotel and Casino, and he believes that the petitioner has the honesty and integrity to work successfully in the casino industry.

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. 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 good character, honesty and integrity. The Act also sets forth grounds for disqualification. Section 90e incorporates the disqualification criteria set forth in section 86 of the Act. Pursuant to section 86c(1) and 86g, the Casino Control Commission shall deny a casino employee license to any applicant who has committed an offense specifically identified as a disqualifier from licensure, even if such offense has not been prosecuted under the criminal laws of this state.

On March 17, 1985, the petitioner sold approximately 1/4 ounce of marijuana to a police informant, contrary to N.J.S.A. 24:21-19(a)1. This offense is comparable to N.J.S.A. 2C:35-5a(1), which would be a crime of the fourth degree pursuant to N.J.S.A. 2C:35-5b(12). The petitioner also had in his possession with the intent to distribute it a quantity of the controlled dangerous substance psilocybine, contrary to N.J.S.A. 24:21-19(a)1. This is also comparable to a violation of N.J.S.A. 2C:35-5a(1), and it is a crime of the third degree, pursuant to N.J.S.A. 2C:35-5b(13).

Under section 86c(1) of the Act, violations of N.J.S.A. 2C:35-5 which constitute crimes of the second or third degree are disqualifiers. As noted above, conduct constituting such an offense is a disqualifier from licensure pursuant to section 86g, even

if such offense has not been prosecuted. Therefore, I **CONCLUDE** that the petitioner is subject to denial of his application for a casino employee license on the basis of his commission of a disqualifying offense.

Section 90h of the Act provides that the petitioner shall not be denied a casino employee license on the basis of his commission of an otherwise disqualifying offense, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h shall be considered.

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

The license which the petitioner seeks would permit his employment in a licensed casino in a gaming-related, non-experiential capacity. He presently holds a casino hotel employee registration which is not the subject of this proceeding. The petitioner is 26 years old and he is gainfully employed.

When the petitioner was a 21-year-old student at Glassboro State College, he sold a small quantity of marijuana to a police informant and he had in his possession marijuana and psilocybine which he intended to sell. He was selling drugs because he

needed the money and because this was a type of activity which was also engaged in by those with whom he associated. Following his indictment on charges of possession and possession with intent to distribute a controlled dangerous substance, the petitioner was afforded an opportunity to participate in a conditional discharge program. He satisfactorily completed the program and all charges were subsequently dismissed.

The petitioner truly regrets his unlawful conduct in 1985. He recognizes that the conduct was illegal and stupid and he has credibly asserted that such conduct will never happen again. The petitioner has successfully worked in the casino industry and has achieved the respect of his supervisors. Those who have had an opportunity to evaluate his performance consider him to be an honest and trustworthy individual.

The petitioner is now a mature and responsible citizen. He acknowledges his unlawful conduct five years ago and he has presented substantial evidence to demonstrate that there is no likelihood whatsoever of his again becoming involved in illegal activity. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner, who has committed a disqualifying offense under section 86c(1) of the Act, has established his rehabilitation by clear and convincing evidence, within the meaning of section 90h of the Act. I also **CONCLUDE** on the basis of the undisputed facts in this matter that the petitioner has sustained his burden of establishing by clear and convincing evidence that he presently possesses the good character, honesty and integrity required for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Act. Therefore, I **CONCLUDE** that the petitioner's application for licensure as a casino employee should be **GRANTED.**

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Joseph M. Sciacca for licensure as a casino employee be **GRANTED.**

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if 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 30, 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

3-30-90
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 3 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the petitioner:

- P-1 Application and order for termination of conditional discharge
- P-2 Letter from Associate Dean of Students, Marguerite M. Stubbs, dated June 19, 1986
- P-3 Letter from Chairman Robert J. Jacobs, dated October 1989
- P-4 Letter from George J. Foley

For the respondent:

- R-1 Personal History Disclosure form
- R-2 Glassboro Police Department arrest report, dated March 17, 1985
- R-3A Glassboro Municipal Court Complaint
- R-3B Glassboro Municipal Court Complaint
- R-4 Indictment and Disposition
- R-5 Glassboro State College campus police investigation report
- R-6 Inventory of items seized
- R-7A Request for examination of evidence
- R-7B New Jersey State Police laboratory report

WITNESSES

For the petitioner:

Joseph M. Sciacca
Sharon Corcoran
Vita Sciacca

For the respondent:

Joseph M. Sciacca

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-366
APPLICATION NO. 68068-22
OAL DOCKET NO. CCC 03333-89
ORDER NO. 90-8-7

APPLICATION OF JOSEPH V. SCOTT, JR.
FOR A CASINO EMPLOYEE LICENSE — ORDER

A hearing 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 February 21, 1990,

IT IS on this 21ST day of March 1990, ORDERED that the initial decision is modified as follows:

> to specifically find the now-rehabilitated applicant was disqualified pursuant to N.J.S.A. 5:12-86(c)(1) and (g) for committing acts (unemployment fraud) which constitute theft by deception in excess of $500 contrary to N.J.S.A. 2C:20-4.

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

BB

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3333-89
AGENCY DKT. NO. 89-EA-366

JOSEPH V. SCOTT, JR.,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Steven T. Kaplan, Esq., on behalf of petitioner

James J. Armstrong, Deputy Attorney General, for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: December 12, 1989 Decided: January 16, 1990

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

This matter arises out of petitioner's application for licensure as a casino employee, pursuant to *N.J.S.A.* 5:12-1. *et seq.* Respondent filed an objection with the Casino Control Commission, and the matter was transmitted to the Office of Administrative Law (OAL) as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.* A hearing was conducted on November 30, 1989, and the record closed on December 12, 1989 with receipt of documentary evidence unavailable at the hearing.

The questions presented are whether petitioner can demonstrate rehabilitation, pursuant to *N.J.S.A.* 5:12-90h and whether he is a person of a good character and financial stability, *N.J.S.A.* 5:12-89b(1), (2) and *N.J.S.A.* 5:122-90b.

The facts are either stipulated or undisputed. In June 1983, the Division of Unemployment and Disability Insurance obtained a judgment against petitioner in the amount of $1,901 as a result of his having received unemployment benefits improperly from April through October 1981. During this period, petitioner had been employed as a waiter at the Sands Hotel and Casino. Though unprosecuted, the conduct was statutorily disqualifying under the Casino Control Act. Petitioner did not initially satisfy this judgment and interest accrued so that at one point he owed $3,767. All but $400 of this debt has now been paid to unemployment, mostly through governmental transfers of tax refunds and other disability benefits due petitioner.

In April 1984, petitioner filed a bankruptcy petition seeking to discharge debts in the amount of $1,352,773.67. This petition was granted by the Court in February 1985.

In October 1983, petitioner became indebted to Great American Financial Services for $1,400, which account was charged off in May 1984.

In January 1977, petitioner was arrested in Galloway Township. He was charged with two counts of possession of a weapon without a permit contrary to *N.J.S.A.* 2A:151-41, which is comparable to *N.J.S.A.* 2C:39-2a, possession of narcotics paraphernalia, contrary to *N.J.S.A.* 2A:170-77.5, which is comparable to N.J.S.A. 2C:36-1, and possession of marijuana under 25 grams, contrary to *N.J.S.A.* 24:21-20(a)(4), which is comparable to *N.J.S.A.* 2C:35-10(a)(4). In February 1977, he pled guilty to two counts of possession of a weapon without a permit and the other charges were dismissed. He was sentenced to 30 days in the Atlantic County Jail. Petitioner reported all of this derogatory information on his Personal History Disclosure Form.

Petitioner testified that he is 39 years old and a lifelong resident of the State of New Jersey. He now lives with his wife of ten months, and with his child from a previous marriage. He has been a mason foreman at Resorts International since September 1984 and he also works part-time at Convention Hall. He testified that

during this period he has had no problems on the job, and he now meets his expenses.

Petitioner acknowledged that he sought to deceive the authorities in 1981 by collecting unemployment benefits while working at the Sands. His bankruptcy in 1984 arose from debts incurred in 1979 while he, his former wife and mother were operating a restaurant and two pizza parlors. He testified that they were all inexperienced and the businesses failed. As a result, he was ruined financially and had to seek protection under the bankruptcy laws. Petitioner testified that the $1,400 debt to Great American Financial Holiday Universal was paid, and he submitted checks to so indicate. This was a membership fee in a health spa. He testified that his criminal offense has now been expunged but that the incident involved a search of his automobile in which unpermitted weapons were found. He testified that these were for target shooting. He also recalled that there was some marijuana in the car which was not his.

Petitioner testified that as a mason foreman, he repairs tile and does concrete work, and that a casino employee license would allow him to extend his activity to the casino floor. He does not handle money now on behalf of Resorts and does not anticipate any change should the license be granted.

Petitioner also submitted a series of commendation letters from his pastor, friends and supervisors at Resorts. These reflect the common theme that he is a person of stability and integrity.

This is the substance of the record. Petitioner was a credible witness. He openly acknowledged his prior wrongdoing with respect to the 1977 conviction, and his receipt of unemployment compensation while working. He has had no difficulty with law enforcement since that time. He described how he, his mother and former wife were inexperienced and that their businesses simply became overextended and failed. He has worked successfully in the casinos on a full-time basis since 1984 and his supervisor indicates that he is trustworthy. The debt to the Division of Unemployment Compensation has been substantially liquidated, and he has paid his health spa membership. The fact of his bankruptcy should have no bearing upon his receipt of a license. First, he was young and inexperienced when he took on these debts and second the present nature of his work does not require financial acumen.

Based on the foregoing, it is my conclusion that petitioner has established his rehabilitation and that he is a person of good character and financial stability. It is **ORDERED** that he be awarded a casino employee license.

This recommended decision may be adopted, 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 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(c).

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

1/16/90
DATE

SOLOMON A METZGER, ALJ

Agency Receipt:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 1 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

lh

WITNESS

For petitioner:

Joseph V. Scott, Jr., petitioner

For respondent:

None

EXHIBITS

For petitioner:

P-1 Letter, undated, from Ronald E. Smith, Pastor, re: Joseph V. Scott, Jr.

P-2 Letter, dated October 18, 1989, from William J. Forster, Director of Facilities, Resorts International Casino-Hotel,. re: Joseph V. Scott, Jr.

P-3 Letter, undated, from Mr. and Mrs. Frank F. Stark, re: Joseph V. Scott, Jr.

P-4 Letter, dated November 21, 1989, from William D. Fremont, Finance Advisor, International Geneva Association, Inc., re: Joseph V. Scott, Jr.

P-5 Letter, dated November 24, 1989, from Steve Sherman, Director of Sales, Hospitality Supply, Restaurant and Bar Equipment, re: Joseph V. Scott, Jr.

P-6 Letter, dated November 24, 1989, from Kenneth Dalen, Account Executive, Superior Coffee and Foods, re: Joseph V. Scott, Jr.

P-7 Letter, dated November 21, 1989, from Peter J. Sposito, Jr., re: Joseph V. Scott, Jr.

For respondent:

R-1 Claimant's Benefit Payment and Employment Record, date prepared March 4, 1983

R-2 Claimant's Benefit Payment and Employment Record, date prepared August 3, 1982

R-3 Determination and Demand for Refund of Unemployment Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation, dated May 20, 1983

R-4 Record of Hearing, date of hearing March 25, 1983

R-5 Certificate of Debt, June 28, 1983

R-6 Claimant Inquiry, dated February 10, 1987

R-7 United States Bankruptcy Court, Discharge of Debtor, dated September 7, 1984

R-8 Personal History Disclosure Form of Joseph V . Scott, Jr., dated June 26, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-290
LICENSE NO. 09096-21
OAL DOCKET NO. CCC 651-89
ORDER NO. 90-16-4

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
THOMAS L. SMITH

ORDER

A hearing 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 April 18, 1990,

IT IS on this 9th day of May 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 651-89

AGENCY DKT. NO. 89-EA-290

THOMAS L. SMITH,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Michael H. Schreiber, Esq., for petitioner (Schreiber & Friedman, attorneys)

James J. Armstrong, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: September 19, 1989 Decided: March 9, 1990

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

STATEMENT OF THE CASE

This matter concerns the application of Thomas L. Smith (petitioner) for renewal of his casino employee license, which permits his employment in a licensed casino as a blackjack floorperson and a baccarat dealer. By letter report to the Casino Control Commission dated December 5, 1988, the Division of Gaming Enforcement (Division) objected to renewal of the petitioner's licensure, based upon his record of arrests and conduct since his last license renewal in 1983. This is the issue:

Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for casino employee licensure by sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

By letter to the Casino Control Commission dated January 17, 1989, the petitioner requested a hearing on his renewal application. On January 30, 1989, the Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to the N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held on April 25, 1989. The hearing was thereafter held as scheduled on September 19, 1989, and the record closed on that date.

FINDINGS OF FACT

Many of the material facts in this matter are undisputed. The petitioner is a 47-year-old resident of Brigantine, New Jersey. He is married to Coleen Kelly Smith and he shares custody of his 13-year-old son with his former wife, Rosalie Smith. The petitioner was divorced from Rosalie Smith about six years ago, after about ten years of marriage.

The petitioner last worked as a blackjack floor person and baccarat dealer about three years ago. He has since become a carpet installer. He needs his license so that he can install carpeting on casino floors. According to the petitioner, his last carpeting work was done in July 1989, when a job was undertaken at Convention Hall in Atlantic City through the Carpenter's Union.

It is undisputed that the petitioner has been arrested on eight occasions since his last license renewal in 1983. Most of these arrests arose from difficulties the petitioner experienced as a result of his earlier troubled marriage and all of them were related to his personal problems. On August 30, 1983, the petitioner and Rosalie Smith were engaged in divorce litigation and were separated. On that date, Rosalie Smith signed a complaint at police headquarters charging the petitioner with harassment, contrary to N.J.S.A. 2C:33-4. More specifically, Ms. Smith alleged that the petitioner had

stood outside her home and had annoyed her with offensively coarse language. The petitioner came to police headquarters and was served with his summons. It is undisputed that the petitioner was found guilty on this charge and was required to pay a $25 fine, plus $25 court costs (Exhibit R-1).

On October 9, 1983, Rosalie Smith again charged the petitioner with harassment, alleging that he had followed her inside a local bar and was causing her embarrassment and annoyance (Exhibit R-2). The petitioner received his summons at police headquarters on October 10, 1983. It is undisputed that this charge was subsequently dismissed.

On March 20, 1984, Rosalie Smith charged the petitioner with criminal mischief, contrary to N.J.S.A. 2C:17-3. Ms. Smith alleged that the petitioner had come to her home and had argued with her about custody of their son. She accused the petitioner of becoming irritated and pulling a metal mailbox from the front of her home (Exhibit R-3). The petitioner was again served with a copy of the complaint at police headquarters.

On May 10, 1984, Rosalie Smith again charged the petitioner with harassment, contrary to N.J.S.A. 2C:33-4. She alleged that he had followed her and her boyfriend in his car, had tried to prevent her from entering her house, and had made several phone calls to her home after midnight (Exhibit R-4). The petitioner was served with a copy of the summons shortly after the charges were made. It is undisputed that this charge was subsequently dismissed.

On the night of August 23, 1984, the petitioner and Rosalie Smith had another altercation at a local bar. Ms. Smith again charged the petitioner with harassment, alleging that he had engaged in a course of alarming and seriously annoying conduct (Exhibit R-5). This time, the petitioner signed a counter-complaint against Ms. Smith, charging her with harassment. It is undisputed that both of these complaints were subsequently dismissed.

On March 13, 1985, the petitioner was charged with harassment by Linda Freedman, a former girlfriend. She alleged that he called her repeatedly at work and also had followed her in his car (Exhibit R-6). Ms. Freedman also alleged that the petitioner had threatened her and was harassing and annoying her to the point that she found it

difficult to work and to carry on with her life. The petitioner received service of the summons at police headquarters. It is undisputed that this harassment charge against the petitioner was subsequently dismissed.

The petitioner's next involvement with the Brigantine Police Department occurred on January 17 and 18, 1987. On the former date, the police received a call from Linda Freedman. She told the police dispatcher that the petitioner had taken an overdose of pills and was going to commit suicide. The police went to the petitioner's residence and he appeared to be fine. He was about to take his son to the boy's mother. Since there did not seem to be a problem, the police left. Some time later, Ms. Freedman called the police and stated that the petitioner had returned to his residence and his vehicle was damaged. The police returned to the scene and spoke with the petitioner, who appeared to be more emotional in demeanor. The petitioner's son was still with him and the police informed the petitioner that they would take care of getting the boy to his mother's house. Some time later, the petitioner was examined at the Atlantic City Medical Center Crisis Intervention Unit and was then returned to the Brigantine Police Department. After receiving a warning from the police captain, the petitioner was released to go about his business. The police investigation reports concerning this incident were admitted into evidence as Exhibit R-7.

The next morning, Linda Freedman called the Brigantine Police to report that the petitioner was tampering with her vehicle. The police arrived at the scene and observed the petitioner walking away from Ms. Freedman's front yard and they heard a hissing sound coming from the left front tire of her vehicle. The petitioner was arrested and charged with harassment, contrary to N.J.S.A. 2C:33-4 and criminal mischief, contrary to N.J.S.A. 2C:17-3(a)2 (Exhibit R-9). While the police investigated this incident, they learned more information from Linda Freedman concerning the events of the previous evening. As a result, the petitioner was also charged with attempting to cause bodily injury to his son by intentionally ramming his motor vehicle into a telephone pole while the child was a passenger, contrary to N.J.S.A. 2C:12-1. He was also charged with child abuse and endangering the welfare of a child, contrary to N.J.S.A. 2C:9-6 and N.J.S.A. 2C:24-4 (Exhibit R-7).

After his arrest, the petitioner was released on 10 percent cash bail in the amount of $500 (Exhibit R-8). He was ordered to have no contact with his children and to obtain inpatient rehabilitation at the Seabrook House or a comparable facility. He was also ordered to attend narcotics anonymous or alcoholics anonymous meetings daily. On February 4, 1987, the petitioner waived the indictment on the endangering the welfare of a child and child abuse charges. Proceedings on the accusation were postponed pending the petitioner's release into the custody of the Pre-Trial Intervention Program (Exhibit R-8). The petitioner was admitted into the PTI Program on March 6, 1987. The participation agreement setting forth the conditions for satisfactory completion of the program was admitted into evidence as Exhibit P-10.

On February 12, 1987, the petitioner was admitted as an inpatient at the Riverside House for alcohol and drug rehabilitation. His discharge summary was admitted into evidence as Exhibit P-1. His admission diagnosis was reported to be alcoholism addiction and drug abuse. His prognosis upon discharge was described as "good". Among his after-care treatment plans was the proposal to attend alcoholics anonymous type meetings four to five times per week (Exhibit P-1).

It is undisputed that the petitioner successfully completed the requirements of the Pre-Trial Intervention Program. By order of November 6, 1987, the charges against the petitioner arising from the incidents on January 17 and 18, 1987, were dismissed (Exhibit P-3). The petitioner has had no further involvement with the criminal justice system.

Testifying on his own behalf, the petitioner acknowledged each of his arrests. He stated that the series of events involving his wife was caused by the splitting of their relationship. Although he acknowledged that he has abused alcohol, amphetamines and marijuana, the petitioner contended that alcoholism did not have much to do with the problems with his wife.

According to the petitioner, the January 1987 arrests were the result of his having taken improper medication. A letter from Robert Schwab, D.O., was admitted into evidence as Exhibit P-2. According to Dr. Schwab, the petitioner visited his office on January 17, 1987, exhibiting symptoms of anxiety stress reaction. The petitioner was given a prescription for Ativan. According to Dr. Schwab, this new medication for the

petitioner could have caused poor judgment while driving. The petitioner testified that he was on this medication when he was involved in the car accident. He noted that neither his son nor he were hurt.

The petitioner stated that he admitted himself to the Riverside House on February 12, 1987 (Exhibit P-8). He was then diagnosed as an alcoholic and a drug abuser. According to the petitioner, four weeks of alcoholism therapy helped him. He then had similar outpatient treatment, including attending alcoholics anonymous three times per week. The petitioner stated that he still attends AA, and he also has begun to attend a Christian fellowship at Greentree Ministries. A letter from Pastor Warren Huber dated March 24, 1989, was admitted into evidence as Exhibit P-7. According to Pastor Huber, the petitioner became an active member of the Greentree Church and has attended services three times every week with his family. He also noted that the petitioner has been undergoing pastoral counseling with his wife to help improve the quality of their marriage. Pastor Huber stated that the petitioner "seems very sincere and responsive and shows real significant signs of growth."

It was the petitioner's testimony that he has not used alcohol or drugs since his release from the Riverside House in March 1987. He candidly acknowledged that he nevertheless still has problems with relationships. When these problems arise, he obtains help through counselling. A closing summary from the Family Service Association dated March 16, 1989, was admitted into evidence as Exhibit P-4. This summary reports that the petitioner attended 14 individual counselling sessions to work on his relationship with his wife and family. Among his treatment goals were to remain free from alcohol and mind altering drugs and to attend AA meetings weekly. Noting that the petitioner was free from alcohol and mind altering drugs, the out-patient therapist stated that the petitioner has dealt with his compulsivity and impatience and was feeling more positive about himself and his future.

The petitioner testified that he is now able to spend quality time with his son. The petitioner has previously been a volunteer soccer coach in Brigantine and he would like to resume coaching. He is also a distance runner, logging about 30 miles per week. According to the petitioner, taking care of his body is important to him, and this has made it all the more dismaying that he use to resort to alcohol and drugs. His counselling programs have helped him to understand this. The petitioner testified sincerely that he

admits his problems and he now understands how to remain law abiding.

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

The only significant factual dispute in this matter concerns the nature of the petitioner's admissions to Division of Gaming Enforcement Agent Donald E. Ellison. Testifying on behalf of the Division, Agent Ellison stated that he interviewed the petitioner in August 1988. They discussed each of the petitioner's arrests between 1983 and 1987. As noted above, the petitioner admitted each arrest. However, Agent Ellison further tetified that the petitioner admitted to the alleged conduct underlying each arrest. Of all the arrests, the only one resulting in a conviction was the arrest for harassment on August 30, 1983. All other charges were eventually dismissed.

Testifying on his own behalf, the petitioner recalled his interview by the Division agent. He acknowledged each of the complaints and arrests. It was his recollection that he had maintained his innocence on all but the August 30, 1983 arrest. However, the accuracy of the petitioner's memory is suspect. When questioned specifically about each of the eight arrests, the petitioner could not remember the incidents underlying five of them. The petitioner did not deny the alleged conduct underlying his last charges in January 1987. He simply could not remember the events.

Agent Ellison's testimony was sincere and believable in every respect. There is nothing to indicate that the agent was not telling the truth. However, the petitioner was also a sincere and believable witness. He candidly admitted his past alcohol and drug abuse. It is fair to infer that his earlier dependence on these substances has adversely affected his ability to recall events occurring when he was using alcohol and drugs. Accordingly, it is more likely than not that the petitioner now no longer remembers that he did admit to some of the conduct underlying his arrests when he was interviewed by Agent Ellison in August 1988. I so **FIND.**

CONCLUSIONS OF LAW

Pursuant to Section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. It is the intention of the Act to preclude the creation of any property right in any license permitted under the Act and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such a privilege. 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 good character, honesty and integrity.

The Division of Gaming Enforcement objected to renewal of the petitioner's licensure, based upon his record of arrests and conduct since his last license renewal in 1983. The credible evidence in the record establishes that these arrests arose from difficulties the petitioner experienced as a result of his earlier troubled marriage, and these difficulties were compounded by the petitioner's alcoholism and drug abuse.

The petitioner's last arrest occurred in Janaury 1987. Since that time, he has acted appropriately to deal with his personal problems. He has undergone both in-patient and out-patient treatment and counselling. In addition to satisfactorily completing a pre-trial intervention program, the petitioner has been able to respond in a constructive way to his counselling and therapy. He continues to attend alcoholics anonymous on a frequent basis.

It is reasonable that the petitioner's conduct between 1983 and 1987 be seen as impacting negatively on his qualifications for licensure. One of the many consequences which the petitioner faced was the necessity to establish his qualifications for licensure at the hearing. Having reviewed all of the credible evidence in this matter, I am convinced that the petitioner has taken conscious control over his life and that he has established by clear and convincing evidence that he presently possesses the good character, honesty and integrity required for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Act. I so **CONCLUDE.**

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Thomas L. Smith for renewal of licensure as a casino employee permitting him to work in a licensed casino as a blackjack floor person and a baccarat dealer be **GRANTED.**

This recommended decision may be adopted, 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 9, 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

3-9-90
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 14 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For the petitioner:

P-1	Discharge summary, dated March 19, 1987 under cover letter, dated August 29, 1989
P-2	Letter from Dr. Schwab, dated January 30, 1987
P-3	Order of Dismissal
P-4	Family Service Association closing summary, dated March 16, 1989
P-5	Letter dated April 28, 1989
P-6	Municipal Court disposition list, dated May 2, 1989
P-7	Letter from Pastor Huber, dated March 24, 1989
P-8	Rehabilitation summary, dated March 11, 1987
P-9	Not in evidence
P-10	Pre-Trial Intervention Program conditions

For the respondent:

R-1	Arrest and investigation reports, dated August 30, 1983
R-2	Arrest and investigation reports, dated October 5, 1983
R-3	Arrest and investigation reports, dated March 20, 1984
R-4	Arrest and investigation reports, dated May 10, 1984
R-5	Arrest and investigation reports, dated August 24, 1984
R-6	Arrest and investigation reports, dated March 13, 1985
R-7	Arrest and investigation reports, dated January 17, 1987
R-8	Waiver of indictment, accusation, and order of postponement
R-9	Arrest and investigation reports, dated January 18, 1987

WITNESSES

For the petitioner:

Thomas L. Smith

For the respondent:

Donald E. Ellison

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-42
LICENSE NO. 17806-21
OAL DOCKET NO. CCC 6319-89
ORDER NO. 90-22-3

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF PATRICIA A. STRICKLAND

ORDER

A hearing 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 May 30, 1990,

IT IS on this 7th day of June 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6319-89
AGENCY DKT. NO. 90-EA-42

PATRICIA A. STRICKLAND,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Patricia A. Strickland, petitioner, pro se

Charles Kimmel, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: April 3, 1990 Decided: April 18, 1990

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

Patricia A. Strickland seeks renewal of her casino employee license. By letter of July 20, 1989, the Division of Gaming Enforcement ("Division") filed a letter with the Casino Control Commission ("Commission") objecting to renewal. Ms. Strickland requested a hearing on the proposed rejection and the matter was sent 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 December 11, 1989, before the Honorable Edgar R. Holmes, ALJ. Judge Holmes issued a Prehearing Order on December 15, 1989.

A hearing was held before Administrative Law Judge Jeff S. Masin on April 3, 1990. The record closed following the hearing.

ISSUES

The Prehearing Order established the issues for consideration at the hearing. These were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86(c), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86(g) to wit: N.J.S.A. 2C:20-4, by receiving unemployment compensation to which she was not entitled.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89(b)(2).

C. Whether petitioner may demonstrate rehabilitation pursuant to §90(h) of the Control Casino Act.

EVIDENCE

Patricia A. Strickland testified as a witness called by the Division of Gaming Enforcement. Ms. Strickland acknowledged that she received unemployment benefits from October 6, 1984 through April 5, 1985, a period when she was working part-time at the Tropicana Casino Hotel. According to the witness, at first she told unemployment representatives that she was working part-time, but then told them that she was working less hours, or no hours at all, when in fact she actually was working one or two days a week and did not report the same. She acknowledged that she knew that she should not be collecting unemployment while she was working at the Tropicana.

According to Ms. Strickland, she started working at the Tropicana in 1981 and by 1984 was working as a slot attendant and then a dealer. She had a clean record and was married. In 1984 she and her husband bought a home. Thereafter, her husband started using drugs. She also began to have problems with her son, who

had been born in 1974. He was stealing, not going to school and having run-ins with the police. Her husband was constantly taking drugs. At the time, her husband was employed at the Atlantis Casino Hotel.

In late 1984 or early 1985, Ms. Strickland's husband hit her son so hard that he left marks on the child's body. The child reported this to his grandmother, who advised the Division of Youth and Family Services. DYFS had the child removed from the Strickland home and placed in foster care. Ms. Strickland's husband was never home, her child had been removed from the home, and she was paying the bills and trying to keep the mortgage alive. She was also attempting to deal with credit problems, many of which were caused by the bills run up by her husband. He was arrested in April or May of 1985 on a drug charge New York City and she had to put up $1000 bail to get him out of jail. In addition, the home went into foreclosure and her husband continued to take money through her credit cards. Eventually, Strickland "lost everything". Her husband went into rehabilitation and while there he called and made threatening statements to her, which required that she receive protection. Eventually her husband left entirely for two years. The couple is now separated.

According to Strickland, the period of time during which she illegally collected unemployment benefits roughly mirrored the late 1984, early 1985 period when she was having the most serious difficulties with her husband, his drug problem, her son and his problems, and the eventual removal of her son from the home. She was in desperate straits and was trying to keep her family going and keep a roof over their head. She was receiving no help at all from her husband .

On October 16, 1987, Ms. Strickland was arrested on a shoplifting charge. By this time she herself was taking cocaine and drinking. She "didn't care any more." She was in a Bradlee's department store in Cardiff and picked up a pocketbook. She was arrested for shoplifting, although at the time she had a credit card, $400 in cash and a gram of cocaine in her pocket. The police never discovered the cocaine.

In 1987, Ms. Strickland filed for bankruptcy. Her debt to unemployment was discharged as a result of the bankruptcy proceedings. She began to go to church and started to get her life back together. However, her son was still stealing from her. She went into counselling, her son was placed on probation.

Throughout the difficult years, Ms. Strickland remained employed at the Tropicana. She had first begun working in the casino industry in 1980 at Harrah's Casino Hotel, but has been continuously employed on a part-time basis at the Tropicana since 1981. Her casino employee license was renewed in 1984. She has never been disciplined at work and in fact has been nominated as employee of the month.

According to the applicant, she last used any illegal drugs in 1987. She does use alcohol occasionally, but has no problems as a result of this drinking and is undergoing no counselling at this time. She does get migraine headaches and the people at work understand this and help her out when she needs assistance. She is very sorry that she engaged in the fraudulent conduct and the shoplifting. She has been in no legal difficulties since the shoplifting in 1987 and has been working ever since, while at the same time attempting to deal with her family situation.[1]

Carl McCrae Strickland, Ms. Strickland's son, testified on her behalf. He confirmed his conduct during the 1984-85 period indicating that he was "doing a lot wrong," stealing money from his mom and having problems at school. His father beat him regularly and was always abusing his mother. His grandmother eventually had him removed to a foster home. His sister wanted to leave home and his mother was going to lose the house. All his father ever did was beat him. His mother was the only one giving him support then and she has continued to do so. He now lives with his mother and has little to do with his father, who he apparently has no interest in having a relationship with. His father was "always taking money and sold drugs in his presence." Mr. McCrae is currently 15 years old, in school and working at a job in the Ocean One Mall.

Dolores Matthews, Ms. Strickland's mother, testified concerning the bruises which she observed on her grandson which caused her to have him removed from the Strickland home. She explained that Ms. Strickland's husband was never either a father or a husband and Ms. Strickland always worked. At the time of the unemployment fraud, her daughter was apparently attempting to keep food in her children's stomachs and a roof over their head. While she does not condone what occurred, Mrs. Matthews understands why her daughter did what she did.

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[1] Strickland paid a $150 fine on the shoplifting charge.

DISCUSSION AND ANALYSIS

Ms. Strickland readily admits that she engaged in unemployment fraud. She knew at the time that she received the benefits that she was not entitled to them. The amount of the fraud apparently was close to $5000, well in excess of the $500 which would make this fraud constitute a crime of the third degree. As such, it constitutes an automatic disqualification from licensure.

The crucial question with respect to this application for renewal is whether Ms. Strickland has rehabilitated herself and whether she has the requisite good character, honesty and integrity for licensure. With respect to rehabilitation, an examination of the circumstances surrounding this incident of unemployment fraud presents a compelling case. This individual, who was admittedly employed in the casino industry in 1984-85 and reaping the benefits of that employment, was at the same time under severe and apparently unrelenting pressures at home due to her husband's drug use and abuse, his abuse of her son, her son's serious difficulties with police and school officials, and the apparently crushing financial pressures surrounding the entire situation. Under these circumstances, and I suspect against her better judgment, Ms. Strickland entered into a scheme to obtain unemployment monies while at the same time working. She knew at the time that her conduct was illegal. However, apparently the surrounding circumstances overwhelmed her and she did undertake the illegal course.

At the time of her involvement in the theft by deception, Ms. Strickland was approximately 30 years old. She was old enough to know that what she was doing was wrong. However, when one looks at the totality of the circumstances, one is impressed with the severity of the circumstances.

Examination of Ms. Strickland's life prior to 1984 and subsequent to the shoplifting incident of 1987, indicates that this individual was otherwise a law abiding citizen. It is an extremely impressive fact that she has maintained successful employment at one casino hotel since 1981, in and of itself an unusual circumstance, and here even more significant in view of the tremendous burdens under which she acted through much of this period of employment. That she was able to maintain the employment and that she ran into no difficulty with her employer bespeaks a great deal about the basic underlying good character of this individual. Perhaps the most impressive feature of the testimony was the obvious support and love which

Ms. Strickland attempted to give to her troubled son throughout the period. As Mr. Strickland himself noted, it was his mother who was the only individual (apparently bedsides his grandmother) who stood by him and attempted to help him in his own time of trouble. That the child was removed from the Strickland home for a period is no reflection against Ms. Strickland. I **CONCLUDE** based on the evidence before me that whatever occurred in her home which led to her child being abused and removed was not her fault but was that of her husband, who was apparently heavily involved in drug use and in fact, even sold drugs in front of his young son.

Based on all the evidence presented in this case, I am convinced that Ms. Strickland's brush with the law in 1987 and her previous unprosecuted illegal conduct in connection with the unemployment fraud were aberrations in an otherwise law abiding life. Ms. Strickland has demonstrated much that is commendable in connection with her life. While generally this judge is of the opinion that individuals who commit unemployment fraud while employed by the casinos are entitled to little sympathy, this case presents a strong, and in fact compelling, exception to that rule. Under these circumstances, I **CONCLUDE** that Ms. Strickland has both demonstrated that she has rehabilitated herself from the impact of her disqualifying conduct and that she has the requisite good character, honesty and integrity for licensure.

It is **ORDERED** that Ms. Strickland's renewal application be **GRANTED** .

This recommended decision may be adopted, 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 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(c).

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

Feb 13, 1990
DATE

JEFF S. MASIN, ALJ

Agency Receipt:

4/19/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 24 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

tp

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EXHIBITS

On behalf of petitioner:

None

On behalf of respondent:

R-1 Letter from the State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance with attached schedule of overpayments

R-2 Record of Hearing, dated January 27, 1986

R-3 Employee license renewal application dated March 27, 1987

WITNESSES

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-188
LICENSE NO. 047330-21
OAL DOCKET NOS. CCC 4401-89
and CCC 1275-89
ORDER NO. 90-12-2

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
KENNETH K. THOMAS

ORDER

A hearing having been held befor he 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 March 21, 1990,

IT IS on this 23rd day of March 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly AI
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4401-89
(On remand CCC 1275-89)
AGENCY DKT. NO. 89-EA-188

KENNETH K. THOMAS,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Kenneth K. Thomas, petitioner, *pro se*

Charles Kimmel, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: January 12, 1990 Decided: February 7, 1990

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

The Division of Gaming Enforcement ("Division") filed an objection with the Casino Control Commission ("Commission") to Kenneth K. Thomas' 1986 application for renewal of his casino employee license. Mr. Thomas requested a hearing on the objection 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 Honorable Lillard E. Law, ALJ on September 7, 1989. Judge Law issued a prehearing order on October 3, 1989. The case was tried before Administrative Law Judge Jeff S. Masin on January 12, 1990 at the Office of Administrative Law in Atlantic City.

ISSUES

The Division's letter to the Commission bases its objection to renewal upon Mr. Thomas' alleged involvement in and conviction for theft by deception, a violation of *N.J.S.A. 2C:20-4*, an offense arising out of alleged unemployment fraud which was prosecuted as a third degree offense but which was the subject of a guilty plea to a fourth degree offense. Since the Division seeks to establish that the value of fraud was in excess of $500 even though the plea of guilty was to an offense involving less than $500, the Division proceeds pursuant to its authority in section 86g of the Casino Control Act ("Act"), which provides it with authority to establish that unprosecuted conduct constituted a statutory disqualifying offense under *N.J.S.A. 5:12-86c1*. The issues for consideration therefore are whether or not Mr. Thomas did in fact commit a theft by deception in excess of $500, whether he possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to *N.J.S.A. 5:12-89b(2)* and whether, if he has committed disqualifying conduct, he may demonstrate rehabilitation pursuant to section 90h of the Act.

EVIDENCE

There is no dispute as to the fact that Mr. Thomas did in fact commit a theft by deception in that he received unemployment benefits from the State of New Jersey, Division of Unemployment Security, during a period when he was employed at the Atlantis Casino/Hotel as a security officer. According to Mr. Thomas, he was unemployed at about two or three weeks and then, while still receiving benefits, he became employed at Atlantis. According to documentation received from the Division of Employment Security, Mr. Thomas was overpaid during the period from February 23, 1985, for which benefits were paid March 19, 1985, through August 17, 1985, for which benefits were apparently paid August 20, 1985. The total amount of overpayment of benefits was $3,068. In addition, Mr. Thomas was fined $20 for each week of overpayment or 25 percent of the total amount, which in this case amounted to $767, for a total overpayment, including fine, of $3,835.

Mr. Thomas was indicted on a charge of theft by deception and pled guilty on December 5, 1988. On February 10, 1989, he was sentenced by Honorable Manual H. Greenberg, J.S.C., sitting in the New Jersey Superior Court, Law Division, Atlantic County, to one year probation with a special condition that he make restitution of any balance still due to the Division of Unemployment Security and that he pay $30 to the Violent Crimes Compensation Board. Mr. Thomas completed payment of all monies due to the Division of Employment Security and his probation was terminated by an order signed by Judge Greenberg on or about July 25, 1989, after Judge Greenberg received written notification from the State Unemployment office that all monies due had been paid.

Mr. Thomas, who is 40 years old, unmarried and with no dependents, is now employed with the Atlantic City Fire Department, where he has worked for two years. Prior to that, he worked as a slot cashier for a year at Trump Plaza. According to the petitioner, at the time of his fraudulent conduct he had been behind on his bills, needed tires and a new engine for his car, and was generally behind on his debts. He acknowledged that he was aware that he was collecting unemployment illegally.

Mr. Thomas has never been convicted of any other criminal offenses. According to him, he now has a work schedule which involves four days on, four days off work. On his days off, he attempts to help out in the neighborhood, doing some handy work for elderly residents, and otherwise trying to be of aid to his neighbors. He produced no character witnesses on his behalf.

DISCUSSION

The issue for consideration is what affect the conduct and conviction which arose out of it have upon Mr. Thomas' character and, more broadly upon his relicensure. Based upon the evidence, it appears possible that the theft by deception constituted an aberrational, unlikely to reoccur, situation. Apparently Mr. Thomas was under some financial pressure when he decided to accept unemployment benefits while at the same time working. Obviously, his conduct cannot be condoned. There is no evidence that he has previously resorted to criminal acts.

The fraud occurred in 1975. However, the conviction only occurred in 1989 and the probation period ended approximately six months ago, having been terminated early.

In some ways, perhaps the most damaging aspect of Mr. Thomas' conduct was that he used his position in the casino industry as a means for obtaining income while at the same time stealing from the taxpayers of the State of New Jersey. Individuals who so act violate a form of trust which their licensure imposes upon them, one which requires that they, having been granted a privilege by the state, live up to high standards of conduct and citizenship. It is surely appropriate that these persons should be held to strict account for their misdeeds. While the extent of Mr. Thomas' criminal conduct was limited in scope, it nevertheless does not reflect well upon the casino industry or its employees for a licensed person to dip into the public till while at the same reaping the rewards of casino employment, an employment which may only be obtained after the State has licensed the individual, thereby indicating that he fills the stiff licensing requirements.

Mr. Thomas seeks renewal of a casino employee license. In order to be so licensed, he must establish by clear and convincing evidence that he has good character, honesty and integrity. In view of the conviction and the nature of the offense charged, it is difficult to so find. While admittedly Thomas may not again seek to cheat, his action does suggest a character flaw. Under the circumstances, I **cannot FIND** that he has the necessary good character, honesty and integrity.

In addition, the offense for which he was convicted, theft by deception, *N.J.S.A. 2C:20-4,* involved over $3,000. *N.J.S.A. 2C:20-2* provides that a theft involving in excess of $500, but less than $75,000, is a crime of the third degree. Although Mr. Thomas was convicted of a fourth degree offense, it is clear that had he not entered a guilty plea and had the matter been tried to conclusion, the evidence would have supported a conviction for a third degree offense. As such, pursuant to *N.J.S.A. 5:12-86c(1),* his conduct constitutes an automatic disqualification from licensure.

N.J.S.A. 5:12-90(h) provides for a demonstration of rehabilitation by someone whose conduct automatically disqualifies him from licensure. The statute establishes several factors for consideration. Among these are the nature and duties of the registrant's position; nature and seriousness of the offense or conduct; circumstances under which it occurred, date of the offense, age of the individual when the offense was committed, whether it was an isolated or repeated incident; and any social conditions which may have contributed to it, as well as any evidence of rehabilitation, including good conduct in the community.

At the time Mr. Thomas committed this offense in 1985, he was approximately 35 years old. It appears that he was under some economic pressure at the time. He has presented no character testimony, but has testified on his own behalf concerning some activities in the neighborhood to help out persons in need of assistance.

The most difficult problem with respect to finding rehabilitation, other than the rather short period since his conviction, is the nature of the offense. As noted previously, this unemployment fraud involved an individual who had already been licensed by the Commission and who used casino employment as the means of obtaining an income in addition to the unemployment compensation, which he was not entitled to receive. While it may be occasionally appropriate to license a previously unlicensed or registered individual who comes before the Commission seeking such having previously been involved in an unemployment fraud, one who presents himself for renewal of license or registration and who has committed such an offense while licensed and who has used the industry as a tool in ripping off the public presents a much different, often less sympathetic picture.

Based upon the considerations above, I **CONCLUDE** that Mr. Thomas has not presented sufficient evidence to establish that he has rehabilitated himself. The nature of the offense involved was very serious because of the context in which it was committed. While it may be that the incident was isolated, I **CONCLUDE** that in light of that seriousness it is too soon to assure that this individual would not again engage in such fraudulent conduct were he faced with economic pressures.

CONCLUSION

I **CONCLUDE** that Mr. Thomas is disqualified from licensure because of his conviction of an offense which, based on the evidence presented, in fact involved a fraud of sufficient amount to constitute a crime of the third degree, *N.J.S.A. 5:12-86c(1)*. In addition, I **FIND** that Mr. Thomas has failed to establish his rehabilitation. Finally, I **CONCLUDE** that he has failed to establish by clear and convincing evidence that he possesses the requisite good character, honesty and integrity required for licensure. Therefore, his application for renewal is **DENIED**.

This recommended decision may be adopted, 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 this initial decision with the **CASINO CONTROL COMMISSION** for consideration.

February 7, 1990
Date

JEFF S. MASIN, ALJ

Receipt Acknowledged:

2/7/90
Date

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 9 1990
Date

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Application for Order Granting Termination of Probation

On behalf of respondent:

R-1 Employee License Renewal Application

R-2 Record of Hearing

R-3 Determination and Demand for Unemployment or Disability Benefits and Imposition of Penalty

R-4 Referral to Division of Criminal Justice for Criminal Prosecution

R-5 Certified Copy of Indictment No. 88-05-1304A, State of New Jersey v. Kenneth K. Thomas

R-6 Certified Copy of Judgment of Conviction

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-244
REGISTRATION NO. 75423-40
OAL DOCKET NO. CCC 4422-89
ORDER NO. 90-18-9

STATE OF NEW JERSEY, DEPARTMENT DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant,	
v.	ORDER
ALBERTO B. THOMPSON, Respondent.	

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of May 2, 1990,

IT IS on this 9th day of May 1990, ORDERED that the initial decision is modified as follows:

to correct the Administrative Law Judge's reference to N.J.S.A. 24:21-20 on page 4 of the initial decision and note instead that the respondent's disqualification is based upon his 1984 conviction for possession of a controlled dangerous substance (cocaine) with intent to distribute contrary to N.J.S.A. 24:21-19(a).

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey.

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4422-89

AGENCY DKT. NO. 89-244

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
ALBERTO THOMPSON,
Respondent.

R. Lane Stebbins, Deputy Attorney General for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)
Guy Michael, Esq., for respondent (Brown & Michael, attorneys)

Record Closed: November 27, 1989 Decided: February 9, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (CCC) on February 16, 1989, seeking to revoke the respondent's casino hotel employee registration. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on September 12, 1989, by Administrative Law Judge Joseph Fidler, who identified the following issues to be determined at a plenary hearing:

1. Has the respondent engaged in conduct which constitutes the offense of distribution of a controlled dangerous substance, contrary to N.J.S.A. 2C:35-5, which would be a disqualifier from continued casino hotel employee registration, pursuant to sections 96c(1) and 91b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the Act.

2. Has the respondent, if he has committed an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to section 91d of the Act.

3. Has the respondent been convicted in 1984 of possession of a controlled dangerous substance with intent to distribute, which would be a disqualifier from continued casino hotel employee registration, pursuant to sections 86c(1) and 91b of the Act.

First Issue

The Division was advised by an informant that a Cuban casino employee named Roberto had heroin for sale at 119 South Texas Avenue, Atlantic City, New Jersey. The informant, one Noel Lopez, had been apprehended while selling drugs and sought to obtain favor with the State Police by informing against others.

On December 7, 1989, Lopez was thoroughly searched, given $100 and sent to Roberto's home to buy heroin under surveillance by State Police detectives. Lopez went to 119 South Texas Avenue and was advised by someone there that Roberto had moved around the corner to 4 Oceanic Terrace. Lopez went to 4 Oceanic Terrace and there was no one home. On December 7, 1989, the detectives questioned the local mail man who confirmed that a Roberto Thompson had recently moved from 119 S. Texas Avenue to 4 Oceanic Terrace.

On December 12, 1989, Lopez was again searched, given $100, and sent to 4 Oceanic Terrace. The State Police detectives could not see who opened the door and admitted Lopez. A short time later, Lopez emerged from 4 Oceanic Terrace with a

"bundle" of heroin. According to the testimony, a "bundle" is ten bags and the street price at that time was $100 per bundle. Lopez was again searched, and the bags were submitted to the laboratory where they were confirmed to be heroin.

On December 13, 1989, the operation was repeated and again Lopez returned with a bundle of heroin. On both occasions, Lopez told the detectives, who watched him go in and out of the house, that he purchased the heroin from Roberto. None of the detectives ever saw Roberto enter or leave the house.

On December 14, 1989, the detectives showed Lopez a photograph of Roberto Thompson and asked him if he could identify the picture. He identified the photo as the Roberto from whom he purchased the heroin.

Based on the purchases allegedly made by Lopez, the detectives obtained a no knock search warrant. They went to 4 Oceanic Terrace and broke the window in order to gain entrance. Roberto and his wife were understandably excited. The police found no drugs or residue of drugs; only a scale and some money which Roberto Thompson claimed was Christmas shopping money.

Later, Lopez refused to testify against Roberto Thompson and the criminal charges against Thompson were dismissed. The charges against Lopez were not dismissed and he has fled the area.

The Division has no independent evidence to corroborate the hearsay testimony of Lopez that Roberto Thompson sold heroin to him on December 12 and 13, 1989. We do not know why Lopez refused to testify against Roberto Thompson nor why Lopez has become a fugitive if indeed he is a fugitive. Roberto Thompson, although not a very credible witness in other respects, denied that he sold heroin to Noel Lopez at any time.

Relevant hearsay testimony is admissible in CCC hearings. It may not support a finding however, unless it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. N.J.S.A. 5:12-107(6).

The evidence in this case supported probable cause for a search warrant at the time. There was a "well grounded suspicion" that Thompson sold heroin to

Lopez. State v. Waltz, 61 N.J. 83, 87 (1972). Indeed, a search warrant issued. The return indicates that no drugs were found. In addition, Lopez is now a fugitive after declining to confront Thompson and testify against him. There is no longer reason to conclude that Lopez is "trustworthy." State v. Ebron, 61 N.J. 207, 212 (1972).

The quality of the state's evidence in this case has deteriorated over time.

I **CONCLUDE** therefore that the state has failed to prove by a preponderance of the credible evidence that Robert Thompson distributed a controlled dangerous substance contrary to N.J.S.A. 2C:35-5 and he is not disqualified from casino employee registration pursuant to N.J.S.A. 5:12-86c(1) and 91b on that account.

Third issue

The third issue was added by amendment. It is logically prior however, to the second issue.

The Division proved and the respondent admitted that he was convicted by his plea of guilty on November 16, 1984, of possession with intent to distribute a controlled dangerous substance; cocaine, in the City of Newark, on September 12, 1983. The Statute violated was N.J.S.A. 24:21-20, since recodified as N.J.S.A. 2C:35-5.

This is a statute enumerated under N.J.S.A. 5:12-86c(1) as a disqualification from casino hotel registration. N.J.S.A. 5:12-91b.

I therefore **CONCLUDE** that Roberto Thompson is disqualified from casino hotel employee registration pursuant to N.J.S.A. 5:12-86c(1) and 91b, unless he is saved from disqualification pursuant to N.J.S.A. 5:12-91d, by affirmatively demonstrating that he is rehabilitated.

REHABILITATION

The Act provides that persons who are disqualified from casino employee licensure and hotel registration pursuant to section 86c 1 may still be licensed or registered provided they can affirmatively demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90 and 91d. These rehabilitation statutes require the Commission to

examine the applicants conduct in light of the following criteria: (1) the nature and duties of the position, (2) the nature and seriousness of the offense or conduct; (3) the circumstances under which the offense or conduct occurred; (4) the date of the offense or conduct; (5) the age of the applicant when the offense or conduct was committed; (6) whether the offense or conduct was an isolated or repeated incident; (7) any social conditions which may have contributed to the offense or conduct; (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.

Pursuant to the requirements of N.J.S.A. 5:12-91d, I **FIND**:

1. The respondent has worked in the casino industry as a cleaning person and as a steward. These jobs do not take him on to the casino floor. He has occasion however, to meet casino patrons in the hotel.

2. The offense of cocaine distribution is a serious crime. It is perceived to be more serious now than it was in 1984 when the respondent was convicted. The statute proscribing the offense was "reformed" in 1987 and contains enhanced penalties.

3. The circumstances under which the respondent committed the crime are unknown. The indictment to which the respondent pled guilty merely recites that he possessed cocaine in Newark on September 12, 1983, with the intent to distribute it. The respondent testified that he was in a bar when police raided it and found cocaine. The respondent testified that he did not know it was there. He said his public defender told him to plead guilty anyway because he was the person closest to the cocaine. This is not characteristic advice from public defenders. Nor is it characteristic of New Jersey courts to accept pleas without establishing a foundation upon which a plea can be accepted. Pleas must be made "knowingly" in New Jersey and with a recognition that the party entering the plea realizes his guilt.

There was other evidence in the case that the witness was not credible. He failed to list previous arrests in his Personal History Disclosure Form 4A. He insists he told the person who helped him fill it out about his prior arrests but that the person unilaterally decided, without advising the respondent, to leave the information out of the form, even though it is a sworn document.

4. The offense occurred on September 12, 1983.

5. The respondent was 28 years old when the offense occurred.

6. The respondent has no subsequent convictions.

7. There was no evidence that any social conditions contributed to the offense or conduct.

8. There was no other evidence of rehabilitation offered in this case; no history of employment, no community service, no additional academic or vocational schooling, no recommendation from supervisors, no vouchers from persons who know or work with the respondent.

It is the affirmative responsibility of each person seeking qualification under the Act to establish his qualifications by clear and convincing evidence. N.J.S.A. 5:12-80a. The rehabilitation statute emphasizes that the applicant must affirmatively demonstrate his rehabilitation. N.J.S.A. 5:12-91d.

The respondent has utterly failed to meet this burden.

I **CONCLUDE** that the respondent has failed to affirmatively demonstrate his rehabilitation pursuant to N.J.S.A. 5:12-91h.

I therefore **CONCLUDE** that he is disqualified from casino hotel registration pursuant to N.J.S.A. 5:12-86c1 and 91b.

I **ORDER** that Roberto Thompson's casino hotel registration be **REVOKED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Feb 9, 1990
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

2/13/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 13 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Johanna Parmenter
John Silver
Alberto Thompson

For the Respondent:

Alberto Thompson

EXHIBIT LIST

For the Petitioner:

P-1 Request for Examination of Evidence
P-2 Lab Report
P-3 Request for Examination of Evidence
P-4 Lab Report
P-5 Criminal Complaint
P-6 Personal History Disclosure Form
P-7 Indictment
P-8 Judgment of Conviction

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-52
LICENSE NO. 073244-21
REGISTRATION NO. 062711-40
OAL DOCKET NO. CCC 06687-89
ORDER NO. 90-14-3

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

Complainant,

v.

LINH CAM TRAN,

Respondent.

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 April 4, 1990,

IT IS on this 11th day of April 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Linh Cam Tran 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6687-89

AGENCY DKT. NO. 90-52

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
LINH CAM TRAN,
Respondent.

Ralph Fusco, Deputy Attorney General for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)
Linh Cam Tran, respondent, pro se

Record Closed: January 18, 1990 Decided: February 28, 1990

BEFORE EDGAR R. HOLMES, ALJ:

On August 18, 1989, the Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) seeking to revoke the respondent's casino employee license and casino hotel registration. 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. At a prehearing conference on October 10, 1989, before administrative law judge Joseph Fidler, two issues were identified for resolution at a plenary hearing.

The first issue was described as follows: "With reference to the respondent's conviction for promoting prostitution in the fourth degree, contrary to N.J.S.A. 2C:34-1b (5), has the respondent been convicted of an offense which would render his continued licensure and registration inimical to the policy of the Casino Control Act (Act) (N.J.S.A. 5:12-1 et seq.) and to casino operations pursuant to Section 86c (2) of the Act." The second issue was identified as: "Has the respondent established by clear and convincing evidence that he possesses the good character, honesty and integrity required for continued casino employee licensure, pursuant to Sections 89b (2) and 90b of the Act." A plenary hearing on these issues was convened on January 18, 1990, in Atlantic City.

In 1982, the respondent came to the United States as a refugee from Vietnam. He was 14 years old. He was originally sponsored by an Oklahoma family who, according to the respondent, abused him. With the help of a cousin, respondent escaped to Atlantic City and has been "on his own" ever since. He enrolled in Atlantic City High School and graduated in four years. He supported himself by working at McDonald's and on the boardwalk.

After graduation the respondent was employed in the casino industry as a blackjack and craps dealer until his license and registration were suspended as a result of an indictment in Atlantic County charging him with conspiracy, and promoting prostitution.

The charges occurred during a time when the respondent was moonlighting as a taxi cab driver in Atlantic City in December of 1988. On December 16, 1988, he was arrested at a "house" of prostitution while bringing a customer to the house just at the time when the police conducted a raid. He admitted to the police that he received $5 for every customer he brought to the house. He apparently worked the casinos for patrons for the house of prostitution.

The respondent pled guilty to the 4th degree crime of promoting prostitution on July 16, 1989, and on August 4, 1989, was sentenced to 18 months probation. His probation officer says that he is an ideal probationer. However, he has remained unemployed since August 31, 1989, when his license and registration were suspended.

The respondent was vague about the details of his arrest. He was more than vague about the details of his plea of guilty, he was evasive. He communicated nothing, except the fact that he has paid his fine, which would lead one to the conclusion that he is rehabilitated. Rehabilitation is a factor which must be considered in the inimicality analysis. Division of Gaming Enforcement v. Davis, 8 N.J.A.R. 301, 308 (1986).

The same or similar testimony offered on rehabilitation also goes to the issue of good character, honesty and integrity, N.J.S.A. 5:12-89b (2) and 90b. No such testimony was offered on this question either. Respondent merely offered his probation officer's letter stating that he was an "ideal probationer." The respondent acknowledged that the administrative law judge at the prehearing conference advised him concerning his burden to produce evidence on the issue of good character, but he failed to do so at the plenary hearing.

The respondent's failure to offer any such evidence leads inescapably to the conclusion that he cannot clearly convince that he is of sufficient good character, honesty and integrity to retain his license as a craps and blackjack dealer.

In addition, the provision of prostitutes to casino patrons is inimical to the policies of the Act. Promoting prostitution, in this age of AIDS, may lead to death. This is not the conduct we expect from industry workers.

I therefore **CONCLUDE** that the respondent has been convicted of an offense which would render both his continued employee licensure and registration inimical to the policies of the Act and to casino operations pursuant to N.J.S.A. 5:12-86c (2), 90e and 91b.

I also **CONCLUDE** that the respondent has failed to establish by clear and convincing evidence his good character, honesty and integrity as required by N.J.S.A. 5:12-89b (2) and 90b.

ORDER

It is therefore **ORDERED** that the respondent's casino employee license and casino hotel registration be and are hereby **REVOKED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Feb. 28, 1990
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

3/5/90
DATE

Kenn Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

March 5, 1990
DATE

La Cayne La Vea
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Linh Cam Tran

For the Respondent:

Linh Cam Tran

EXHIBIT LIST

For the Petitioner:

P-1 Package of Documents
P-2 Judgment of Conviction

For the Respondent:

R-1 Letter

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-338
LICENSE NO. 054020-21
REGISTRATION NO. 045876-40
OAL DOCKET NO. CCC 00238-89
ORDER NO. 90-25-2

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

Complainant,

v.

LAZARO TREJO,

Respondent.

ORDER

A hearing 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; and the Commission having considered the entire record of these proceedings at its public meeting of June 20, 1990,

IT IS on this 5th day of July 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /mm
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 238-89

AGENCY DKT. NO. 87-338

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
LAZARO TREJO,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

J. David Alcantara, Esq., for respondent

Record Closed: March 6, 1990 Decided: April 20, 1990

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on March 18, 1987, requesting that the Commission revoke the casino employee license and the casino hotel employee registration of respondent Lazaro Trejo based upon its allegation that respondent had committed and been convicted of the disqualifying offense of Armed Robbery, pursuant to N.J.S.A. 5:12-86c (1).

On January 12, 1989, the matter was transmitted to the Office of Administrative Law (OAL) 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 March 20, 1989, a prehearing conference was held, followed by a Prehearing Order, which set forth the issues to be determined and established July 27, 1989 as the hearing date. The hearing was adjourned at the request of respondent's attorney and rescheduled for November 9, 1989. The matter was adjourned and rescheduled for March 6, 1990. The hearing was held on March 6, 1990 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. the hearing record was closed on that date.

ISSUES

The issues to be resolved by this administrative tribunal and as agreed by the parties are these:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 2C:15-1 (a) Armed Robbery, and is disqualified from both licensure and registration?

B. Whether respondent may demonstrate rehabilitation pursuant to sections 90h and/or 91d of the Casino Control Act?

C. Whether respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b (2)?

UNCONTESTED AND STIPULATED FACTS

Respondent is presently 40 years of age. He arrived in the United States of America from Cuba with the Mariel boat people in or about 1980. In 1982, respondent moved to the State of New Jersey.

While in Cuba, respondent completed his high school education and, thereafter, attended Santa Clara College where he studied veterinary medicine for one year. He has no plans to attend college in this country. Rather, respondent would like to open his own restaurant business. Respondent has been employed in the restaurant business having served as a busperson at Resorts International Hotel

and Casino, Caesars Hotel and Casino and the Showboat Hotel and Casino. Recently, respondent held down two jobs; one, as a busperson at Bally's Hotel and Casino and one, as an attendant at Bally's Texaco Service Station on Boston Avenue, Atlantic City.

On March 14, 1986, respondent was arrested by officers of the Brigantine Police Department following an armed robbery committed by him at the First Jersey National Bank - South in Brigantine. The parties stipulate that the gun used in the robbery was a plastic water pistol. On March 27, 1986, the Atlantic County Grand Jury handed up a one count indictment against respondent alleging that he:

> ... did, in the course of committing a theft upon First Jersey National Bank, inflict or threaten to inflict bodily injury or use of force upon Beverly Smith while armed and in possession of a deadly weapon, a device or instrument which, in the manner it was used or fashioned lead Beverly Smith to believe it capable of producing death or serious injury, contrary to the provisions of N.J.S.A. 2C:15aa and against the peace of this State, the government and dignity of same.

On May 12, 1986, respondent entered a plea of not guilty to one count of robbery. On September 22, 1986, respondent retracted his plea of not guilty and entered a plea of guilty to robbery in the second degree. On October 10, 1986, respondent appeared in Superior Court, before the Honorable Arthur V. Guerrera, JSC, who sentenced respondent to serve seven years in state prison (with credit for three days) and a $30 penalty to the Violent Crimes Compensation Board (VCCB).

Judge Guerrera observed that respondent's act of robbery was respondent's first adult arrest. Nevertheless, Judge Guerrera determined that the very nature of the armed robbery, even though it was committed with a toy gun, clearly dictated that the presumptive sentence (N.J.S.A. 2C:43-6 a (2)) be imposed so as to protect the public and deter this type of conduct (P-1).

On June 28, 1988, respondent was released from Southern State Prison and placed on parole until September 27, 1991. While incarcerated at Southern State Prison, respondent became acquainted with the Reverend Alfred J. Hewett, a full-time prison chaplain. Respondent regularly and voluntarily attended Sunday Mass conducted by Father Hewett. Respondent successfully completed courses conducted

by Father Hewett entitled Spanish Behavior Modification and Behavior Modification in Self-Control Techniques where he also served as an aide. Respondent engaged in prison recreational activities, having won the intramural softball championship. He also successfully completed the prison's substance abuse counseling.

Subsequent to his release from Southern State Prison, respondent was married on November 8, 1989. This was his second marriage. Since his release from prison, respondent has become active in the church and parish activities of Holy Spirit Roman Catholic Church, Atlantic City. Respondent regularly attends meetings offered by Alcoholics Anonymous (A.A.).

CONTESTED FACTS

Respondent testified as to the events of March 12, 13, 14, 1986. On the night of March 12, 1986, respondent had been drinking alcoholic beverage and was extremely depressed. He attempted to telephone and visit his cousin who lived in Brigantine, however, without success. Respondent asserted that he was feeling suicidal and needed someone to talk with. Respondent asserted that he had attempted on two other occasions to take his own life; once in Cuba with a knife, and once in Brigantine while driving a motor vehicle over the Brigantine Bridge.

Respondent recalls purchasing a yellow colored plastic gun, however, he could not recall where he purchased it. Respondent had been drinking prior to entering the First Jersey National Bank in Brigantine. He asserts that he does not recall the events in the bank. He does recall, however, that immediately after leaving the bank he thought of escape. On March 14, 1986, respondent was in a room at the Golden Nugget Hotel and Casino. He testified he had telephoned his girlfriend's residence and was in conversation with his girlfriend's grandmother who informed respondent that his girlfriend was at the Brigantine Police Department reporting the bank robbery. Respondent insisted that he had not committed the offense because he had no recollection of it. He thereafter telephoned the Atlantic City Police Department to get the telephone number of the Brigantine Police Department. He then telephoned the Brigantine Police who arrived at the Golden Nugget and placed respondent under arrest without any resistance.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b (8) establishes that licensure and registration under the Act are revocable privileges which are "conditioned upon the proper and continued qualification of the individual licensee." Section 129 (1) provides for the revocation of or other sanction against the licensee 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 the respondent's criminal misconduct constitutes a disqualifying offense under section 86c (1), and therefore, he cannot continue to hold a license or registration.

Disqualifying Offense Under Section 86c (1) of the Act.

Section 86c (1) of the Act mandates the Commission shall deny a casino license and/or registration to any person who has been convicted of any of the enumerated offenses set forth therein. The offense of robbery under N.J.S.A. 2C:15-1 is one of those disqualifying offenses.

I **CONCLUDE**, therefore, that the Division has established, by a preponderance of the credible evidence, that respondent committed the offense of robbery in violation of N.J.S.A. 2C:15-1a (2), which is a disqualifying offense.

Accordingly, I **CONCLUDE** that respondent is disqualified from holding a casino employee license and a casino employee hotel registration.

Rehabilitation, pursuant to N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d

A license and registrant 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 rehabilitation. N.J.S.A. 5:12-90h; N.J.S.A. 5:12-91d. These sections of the Act set forth the following eight factors 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 (licensee) 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 recommendation of persons who have or have had the applicant under their supervision.

In consideration of petitioner's claim of rehabilitation, the following is found in this record.

(1) Respondent presently is the holder of casino employee license no. 54020-21 and casino hotel employee registration no. 45876-40. Respondent's employment in the casino industry has been in the restaurant and food service business, generally as a busperson. He seeks to retain his non-gaming casino license and employee registration for the employment opportunities in the Atlantic City casinos.

(2) The crime of armed robbery is a very serious offense. The sentencing judge considered all of the circumstances surrounding respondent's conduct and determined that an extended prison term was necessary, even though the offense was committed with a toy gun. Respondent was sentenced to seven (7) years in prison on October 10, 1986. Respondent served less than two (2) years of his sentence when he was paroled on June 28, 1988. His parole extends until September 27, 1991, approximately five (5) years from the date of his conviction.

(3), (4) and (5) Respondent was approximately 36 years of age when he committed the offense of armed robbery. He is an emigre from Cuba, having come

to this country with the Mariel flolilla in or about 1980. He has few friends or relatives in the United States. Respondent admits that he abused alcohol. He asserted that he was under pressure to get money. On March 13, 1986, respondent contends that he was depressed and intoxicated. He recalls purchasing a toy water pistol, however, he does not recall using it to rob the First Jersey National Bank in Brigantine, New Jersey on that date. He subsequently turned himself over to the Brigantine Police.

(6) and (7) This was respondent's first adult conviction. Respondent contends that a contributing factor for his criminal conduct was the culture shock he experienced in this country as contrasted by his life in Cuba. The lack of friends and relatives in the United States also caused him to be depressed where he abused alcohol to the extent that he could not remember events in which he participated or observed.

(8) Respondent's conduct in prison was exemplary as evidenced by his early release where he served less than two (2) years of a seven (7) year sentence. While in Southern State Prison, respondent engaged in behavior modification programs and substance abuse counseling. He was also in regular church attendance while incarcerated.

Subsequent to the termination of his incarceration, respondent has remarried and is now leading a productive life, holding down two jobs. He has devoted a good portion of his time to his wife and church while continuing participation with A A The evidence demonstrates that he now abstains from any and all forms of alcoholic drink.

Respondent has the recommendation as to his rehabilitation of two Roman Catholic priests, friends and former employment supervisors. It is noteworthy that respondent also has the recommendation of his Parole Officer for the retention of his casino employee license and casino hotel employee registration. It appears that respondent began his rehabilitation upon his entry to the Southern State Prison.

Having considered all of the factors above and having given fair weight thereto, I am persuaded that respondent has affirmatively demonstrated his rehabilitation. His only brush with the criminal justice system was alcohol induced

While this in no way excuses his conduct, it does provide some mitigation. Respondent has not demonstrated any violent behavior, except in one incident which was considered to be self defense. There is no evidence he has been in a state of depression while in prison or since his release. He is presently free of use or abuse of alcohol.

I **CONCLUDE**, therefore, that pursuant to sections 90h and 91d of the Act, respondent has clearly and convincingly demonstrated his rehabilitation.

Good Character, Honesty and Integrity as Required by N.J.S.A. 5:12-89b (2).

Under section 90b, which incorporates section 89b (2) by reference, Mr. Trejo is required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity for licensure. In the Matter of the Application of Resorts International Hotel 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 (or licensee), 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 Corp. 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 closely scrutinized. Boardwalk Regency Corporation at 2.

Aside from respondent's aberrant conduct which resulted in his robbery conviction, he possesses indicia of good character, honesty and integrity. He has the unqualified support and recommendation of the Reverend Father Hewett, a full-time prison chaplain, who had frequent contact with respondent while he was incarcerated in Southern State Prison. Father Hewett is of the opinion that

respondent is not only rehabilitated but, moreover, that he will serve the general good of society now that he has been released from prison.

Respondent's parish priest, Father Ronald S. Falotico, has known respondent before and after respondent's prison term and asserts that respondent wishes to make amends to society for his past mistake. Father Falotico opines that respondent is genuinely a very moral person despite his single past altercation with law enforcement. Father Falotico has worked closely with respondent since respondent's release from prison and finds him to be a fine Christian gentleman in every sense of the word. Father Falotico also finds respondent to be a very industrious worker who is intent on helping others in need. The pries finds respondent to be honest and trustworthy and that he is truly rehabilitated.

Having considered all of the evidence before me, I **CONCLUDE** that respondent has shown, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for casino licensure. Lepre v. Caputo, 131 N.J. Super. 118 (Law Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div.1 969).

ORDER

Accordingly, it is **ORDERED** that the Division's complaint against respondent, seeking to revoke respondent's casino employee license and casino hotel employee registration be and is hereby **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

20 April 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

4/25/90
DATE

Kim Wood
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 25 1990
DATE

Jayne LaVecchia/K. Sa
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

Ronald S. Falotico
Alfred J. Hewett
Joseph Martino
Rene Villanueva
Lazaro Trejo

EXHIBIT LIST

For the Petitioner:

P-1 Judgment of Conviction

For the Respondent:

R-1 Letter from Father Falotico
R-2 Diploma from Father Hewett for behavior modification class
R-3 Letter from Mr. Martino
R-4 Letter from Mr. Villanueva
R-5 through R-9 Certificates and awards of Mr. Trejo
R-10 Notice of accommodation from Bally's Grand
R-11 Letter from Maria Negron
R-12 Letter from Margaret Barrini
R-13 Letter from the manager of Harvey's Deli

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-357
REGISTRATION NO. 068285-40
OAL DOCKET NO. CCC 04338-89
ORDER NO. 90-19-14

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

Complainant,

v. ORDER

LOUIS VAZQUEZ,

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; and the Commission having considered the entire record of these proceedings at its public meeting of May 9, 1990,

IT IS on this 15th day of May 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /RM
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4338-89

AGENCY DKT. NO. 89-357

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
LOUIS VAZQUEZ,
Respondent.

Charles F. Kimmel, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Michael L. Testa, Esq., for respondent (Basile, Testa & Testa, attorneys)

Record Closed: February 15, 1990 Decided: March 26, 1990

BEFORE **LILLARD E. LAW,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, alleges that respondent Louis Vasquez is statutorily disqualified from holding a casino hotel employee registration, pursuant to N.J.S.A. 5:12-86c (1), by virtue of his conviction of the offense of possession of a controlled dangerous substance (CDS) with the intent to distribute in violation of N.J.S.A. 24:21-19a (1), comparable to N.J.S.A. 2C:35-5, a crime of the second degree.

On June 8, 1989, this matter was transmitted from the Casino Control Commission (Commission) to the Office of Administrative Law (OAL) 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 3, 1989 followed by a Prehearing Order dated October 4, 1989. A hearing was held on February 15, 1990 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record closed on that date.

ISSUES

The issues to be determined by this tribunal are set forth below as follows:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 24:21-19a(1), Possession of Controlled Dangerous Substance with Intent to Distribute which is comparable to N.J.S.A. 2C:35-5?

B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act?

UNCONTESTED FACTS

Based upon the testimony and other evidence adduced at the hearing, the following facts are neither contested nor in dispute. Therefore, I hereby adopt the following as my **FINDINGS OF FACT** in this matter:

Respondent, who was 24 years of age at the time of the herein hearing, was indicted by the Cumberland County Grand Jury on April 15, 1987 for (1) possession of a CDS in violation of N.J.S.A. 24:21-20a (1) and, (2) possession of a CDS with the intent to distribute, in violation of N.J.S.A. 24:21-19 a (1). Respondent was indicted, along with his then paramour, when he was approximately 21 years of age. On May 14, 1987, respondent entered a plea of not guilty to the indictment. Subsequently, on June 25, 1987, respondent retracted his plea of not guilty and entered a plea of guilty to the second count of the indictment; i.e., possession of a CDS with the intent to distribute. As a consequence of his entry of a guilty plea, the Honorable Isaac I. Serata, J.S.C., entered a Judgment of Conviction and placed respondent on

probation for two years with the following conditions: Respondent was required to pay a fine of $500 at a rate of $10 per week; provide 100 hours of community service and pay a penalty of $30 to the Violent Crimes Compensation Board (VCCB). Count I of the Indictment was dismissed.

Respondent satisfactorily completed his probation by performing his community service with the Spanish Catholic Centers in Vineland, New Jersey and at the Thrift Store operated by the Goodwill Industries in Atlantic City. Respondent also paid the $500 fine and the $30 penalty to the VCCB. Respondent has had no other arrests or convictions since June 25, 1987. His probation was terminated on March 17, 1989.

Respondent is presently employed by Harrah's Marina Hotel/Casino (Harrah's) as a waiter under his casino hotel employee registration no. 68285-40. In or about August 16, 1989, respondent married Wendy Vazquez, nee Hewitt. They have an infant daughter, born June 28, 1989, and Mrs. Vazquez has a three year old daughter from another relationship. Respondent considers Mrs. Vazquez's daughter as his own. Mrs. Vazquez is also employed by Harrah's as a waitress in its Reflections Restaurant. Respondent is the father of a child born to his former paramour, Kimberly Clark. Ms. Clark has moved with the child to a foreign state, therefore, respondent is not presently under any court order for child support or any other financial support for the mother or child.

Respondent has been drug free since on or about his conviction on July 25, 1987. At the request of his attorney, respondent volunteered to undergo drug screening on September 1 and October 27, 1989, and January 23, 1990, by the Damon Clinical Laboratories. The drug screen tested for, among other things, amphetamine, methamphetamine, phenylpropanolamine, barbiturates, doriden, quinine, morphine, methadone, phenothiazine, codeine, cocaine, dilaudid, darvon and dilantin. None of these substances were detected in respondent's urine drug screen on the three dates they were administered to him.

Respondent and his wife reside in a rental property at a cost of $629 per month. They have undertaken some debt for a motor vehicle ($109.90 per month) and furniture ($85 per month with an amount outstanding of $1,400) and are current with these financial obligations.

DISCUSSION AND CONCLUSION

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 respondent Vazquez's alleged violation of N.J.S.A. 24:21-19 a (1) is comparable to a violation of N.J.S.A. 2C:35-5, a disqualifying offense under section 86c (1) of the Act.

Disqualifying Offense Under Section 86c of the Act

The record demonstrates, and respondent admits, that respondent was convicted of possession of a CDS with the intent to distribute, pursuant to N.J.S.A. 24:21-19a (1). The statute, N.J.S.A. 24:21-19 a (1), was repealed by the Legislature, pursuant to the Laws of 1987, chapter 106, section 1. Under the identical act, the Legislature promulgated N.J.S.A. 2C:35-5, which states in pertinent part that:

> ... it shall be unlawful for any person knowingly or purposely:
>
> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance ...

Section 86c (1) of the Casino Control Act mandates that a person who has been convicted of any of the enumerated offenses therein shall be disqualified from holding a casino license (or registration). N.J.S.A. 2C:35-5, is one of those enumerated offenses in section 86c (1), as amended by L. 1987, c. 106.

I **CONCLUDE**, therefore, that the Division has met its burden of proof to clearly demonstrate, by a preponderance of the credible evidence, that respondent is disqualified from holding a casino hotel employee registration by virtue of his commission of the offense of possessing a CDS with the intent to distribute. N.J.S.A. 2C:35-5.

Rehabilitation Under Section 91d of the Act

A registrant in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his rehabilitation, N.J.S.A. 5:12-91d. This section sets forth eight specific criteria to be evaluated when a determination for rehabilitation is to be made and are as follows:

(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 (licensee) 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 recommendation of persons who have or have had the applicant under their supervision.

In consideration of the above factors, the following has been found:

First, respondent is a waiter for Harrah's in its Reflections restaurant. Respondent commenced his employment with Harrah's in or about 1987 as a busperson and has been promoted to waiter within the two year period of his employ. He seeks to retain his registration in order to continue employment in this field.

Second. The offense of possessing CDS with the intent to distribute is a serious crime. The menace of illegal drug distribution, use and abuse has contributed to the erosion and, perhaps, destruction of a segment of our society. Respondent's involvement and participation in this illegal activity perpetuated the unhealthy and treacherous menace. Unfortunately, respondent was also a victim of the toxins as an abuser of the drugs he possessed and distributed.

Third, fourth and fifth. On or about November 6, 1986, respondent was arrested in the City of Vineland, New Jersey, when he attempted to make a sale of lysergic acid diethylamide (L.S.D.). He was approximately 21 years of age at the time of the arrest and is uncertain as to whether he was the subject of an undercover operation or identified by a police informant.

Sixth and seventh. Respondent's arrest on November 6, 1986, was his first and only arrest for possession and possession with the intent to distribute a CDS. Thus, the conduct was an isolated incident. There was no evidence proffered to indicate that any social conditions contributed to the offense respondent's or conduct.

Eighth, respondent has demonstrated evidence of rehabilitation through, among other things, his successful completion of all of the probationary conditions and his assertion that he is drug free and no longer subject to drug use or abuse. The evidence also shows that he is in a happy marriage, living with his wife and natural daughter and a step-daughter whom he considers his own. He has assumed the responsibility of husband and father by providing a comfortable and loving home atmosphere. He is now accepted by his own family, which once rejected him because of his use of drugs, and he is accepted by his in-laws.

Having carefully considered all of the factors enumerated in section 91d of the Act, and having given fair weight thereto, I am persuaded that respondent has met his burden and affirmatively established his rehabilitation by clear and convincing evidence.

Accordingly, I **FIND** and **CONCLUDE** that respondent is rehabilitated and will refrain from illegal activity in the future.

ORDER

Accordingly, it is hereby **ORDERED** that the Division's complaint seeking the revocation of respondent's casino hotel employee registration be and is hereby **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

26 March 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

3/29/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 29 1990
DATE

Jayne LaVenia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Louis Vazquez

For the Respondent:

Louis Vazquez
Wendy Vazquez

EXHIBIT LIST

For the Petitioner:

P-1 Cumberland County Indictment and Judgment of Conviction
P-2 Personal History Disclosure Form 4A

For the Respondent:

R-1 Letter, dated October 25, 1989, to Michael L. Testa, from Debora B. Krawiec, Probation Department, Cumberland County
R-2 Three lab reports from Damon Clinical Laboratories, dated August 31, 1989, October 26, 1989 and January 19, 1990

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-390
APPLICATION NO. 73961-21
OAL DOCKET NO. CCC 3153-89
ORDER NO. 90-6-15

APPLICATION OF SIDNEY W. WEISS
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 February 7, 1990,

IT IS on this 24th day of April 1990, ORDERED that the initial decision is adopted; 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

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly 4/24

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3153-89
AGENCY DKT. NO. 89-EA-390

SIDNEY W. WEISS,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Sidney W. Weiss, the petitioner, pro se

Norma L. Stancil, Deputy Attorney General, for the respondent, (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: December 4, 1989 Decided: January 3, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Sidney W. Weiss, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (security employee), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had been convicted of a disqualifying offense under section 86c(1), and therefore, he lacked the requisite good character, honesty and integrity, pursuant to

section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a security employee in the casino industry. By letter to the Commission, dated March 7, 1989, the Division objected to the petitioner's application for licensure as a security employee, asserting that the petitioner had been convicted in federal district court of bribery of a public official in violation of 18 U.S.C. §201(c), which is analogous to a violation of N.J.S.A. 2C:27-7, compensating public servant for assisting private interests in relation to matters before him, and conspiracy in violation of 18 U.S.C. §371, which is analogous to a violation of N.J.S.A. 2C:5-2, conspiracy, which are disqualifying offenses under section 86c(1). The Division also objected pursuant to section 89b(2). Based upon the report, the Commission notified the petitioner on April 6, 1989, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated April 13, 1989, which was received by the Commission on April 17, 1989, the petitioner requested a hearing. On April 25, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on April 28, 1989, 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 in the matter was held before Administrative Law Judge Lillard E. Law on September 5, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner was convicted in a foreign state of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: Conspiracy to Defraud the United States government, comparable to N.J.S.A. 2C:5-2 and Bribery of a Public Official, comparable to N.J.S.A. 2C:27-7.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for a casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on December 4, 1989, at the Municipal Courtroom, Absecon Municipal Building, Absecon, New Jersey, after which the record closed.

FACTUAL DISCUSSION

The petitioner, Sidney W. Weiss, was employed by the United States government for 33 years. His last nine years of employment was as a purchasing agent at the Defense Industrial Supply Center (DISC). The petitioner was assigned to the Special Management and Review Team, which handled all urgent and priority purchases for DISC. Mr. Weiss was responsible for purchasing hardware such as nuts, bolts, screws, wire and fasteners critical to the maintenance of military aircraft and other strategic equipment. DISC continually and frequently purchases these parts and requires that these purchases be made on a competitive bid basis in order to assure the government obtains the lowest price possible (R-2 & R-4).

Sometime between 1978 and 1981, the petitioner was approached by Mr. Wernovsky, owner of Philadelphia Hardware, Inc., in order to obtain contracts. Mr. Wernovsky had recently had a quadrupal bipass and had a son in college. Mr. Wernovsky asked the petitioner for assistance in getting government contracts and gave the petitioner a bribe. As a purchasing agent, the petitioner could award contracts up to $25,000, and for some purchases, could informally solicit bids. In many instances over a five-year period, the petitioner controlled the entire bidding process by dictating Philadelphia Hardware's or another company's, Delsea Fasteners, Inc., bids and falsely creating higher "competitive" bids that ensured Philadelphia Hardware or Delsea Fasteners would be awarded the contract (R-4).

The petitioner retired in 1983. On May 8, 1986, the petitioner was indicted along with others as a result of an investigation into bidding irregularities at DISC. The petitioner was indicted in the United States District Court for the Eastern District of Pennsylvania in indictment number 86-00235 and was charged with 35 counts of bribery of a public official in violation of 18 U S C §201(c), one count of conspiracy in violation of 18 U.S.C. §371, and three counts of income tax evasion in violation of 26 U.S.C. §7201 (R-2). On September 2, 1986, the petitioner pleaded guilty to two counts of bribery in violation of 18 U.S.C. §201(c), one count of conspiracy in violation of 18 U.S.C. §371, and one count of income tax evasion in violation of 26 U.S.C. §7201 (R-4). The remaining counts of the indictment were dismissed (R-3).

The petitioner was sentenced to pay a $10,000 fine, to be incarcerated for six months, and was placed on probation for five years. The petitioner is paying the fine at a rate of $100 per month and still owes approximately $6800, he served four months and 17 days of his incarceration, and he is scheduled to remain on probation until April 1992. In addition, DISC has revoked the petitioner's pension in order to recover $11,000 in restitution.

The petitioner asserts that he accepted bribes only over a two-year period, not a five-year period. He also indicated that for the purposes of the plea agreement he agreed that he had received approximately $100,000; however, he does not believe he actually received that amount. He also asserted that the government was not overcharged because of his actions. He used the last legitimate bids submitted regarding the purchase of an item in order to develop his fabricated bids. Philadelphia Hardware's bids were always equal to or lower than the last legitimate solicited bids.

The petitioner was born in Philadelphia in 1927, and he is currently 62 years old. He is a high school graduate. He has attended various colleges, but he never graduated from college. In 1946 and 1947, he served in the infantry in the United States Army. He attained the rank of private and was separated with an honorable discharge. In November 1947, the petitioner became employed by the U.S. Postal Service. This began his government employment. In 1957, the petitioner left government service and became employed as a technical writer for the Burroughs Corporation. He thereafter became employed as a writer of military handbooks for H.L. Yoh, Company. In 1960, the petitioner returned to government service as a purchasing agent for the Marine Corps Supply Agency. In 1974, he was transferred to DISC. Since his retirement from the federal government, the petitioner has been employed as a salesman for Crazy Ned's Furniture and is presently a car salesman at McCarthy Ford.

The petitioner is married and has two married daughters, ages 31 and 29. He also has three grandchildren. Throughout his life, the petitioner has been involved in numerous charitable organizations. He has been the entertainment director and charity director for Brith Shalom. He arranged shows and parties for the patients at Children's Hospital and at the Philadelphia Naval Hospital. He formerly was involved in recruiting, arranging for entertainment, and fundraising for the American Legion and the Jewish War Vets. He is also a Mason and a Shriner. He was also the Equal Employment Opportunity Commission (EEOC) chairman at DISC for two years. While

the petitioner has been active in the past, he has not been involved in any of these activities during the last three years. Most of his time is spent working.

Mr. Weiss submitted ten letters in his behalf. Most attest to his honesty and integrity. They describe him as a family man who is hardworking and who devotes time to charitable endeavors. As such, most recommend him for employment (P-1 through P-10).

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. He has accepted responsibility for his misconduct, acknowledged that he was wrong, and has expressed remorse. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

FINDINGS OF FACT

1. The petitioner, Sidney W. Weiss, was employed by the United States government as a purchasing agent at the Defense Industrial Supply Center (DISC).

2. As a purchasing agent, the petitioner could award contracts up to $25,000 and for some purchases could informally solicit bids.

3. Sometime between 1978 and 1982, the petitioner was approached by Mr. Wernovsky, owner of Philadelphia Hardware, in order to obtain contracts. Mr. Wernovsky asked the petitioner for assistance in getting government contracts and gave the petitioner a bribe.

4. In many instances over a five year period, the petitioner controlled the entire bidding process by dictating Philadelphia Hardware's or another company's, Delsea Fasteners, bids and falsely creating higher "competitive" bids that ensured Philadelphia Hardware or Delsea Fasteners would be awarded the contract.

5. On May 8, 1986, the petitioner was indicted in the United States District Court for the Eastern District of Pennsylvania in indictment number 86-00235 and was charged with 35 counts of bribery of a public official in violation of 18 U.S.C. §201(c), one count of conspiracy in violation of 18 U.S.C. §371, and three counts of income tax evasion in violation of 26 U.S.C. §7201.

6. On September 2, 1986, the petitioner pleaded guilty to two counts of bribery in violation of 18 U.S.C. §201(c), one count of conspiracy in violation of 18 U.S.C. §371, and one count of tax evasion in violation of 26 U.S.C. §7201. The remaining counts of the indictment were dismissed.

7. The petitioner was sentenced to pay a $10,000.00 fine, to be incarcerated for six months, and was placed on probation for five years. The petitioner is paying the fine at a rate of $100 per month and still owes approximately $6800, he served four months and 17 days of his incarceration, and he is scheduled to remain on probation until April 1992. In addition, DISC has revoked the petitioner's pension in order to recover $11,000 in restitution.

8. The petitioner was born in Philadelphia in 1927, and he is currently 62 years old. He is a high school graduate. He has attended various colleges, but he never graduated from college. In 1946 and 1947, he served in the infantry in the United States Army. He attained the rank of private and was separated with an honorable discharge.

9. In November 1947, the petitioner became employed by the U.S. Postal Service. This began his government employment. In 1957, the petitioner left government service and became employed as a technical writer for the Burroughs Corporation. He thereafter became employed as a writer of military handbooks for H.L. Yoh, Company. In 1960, the petitioner returned to government service as a purchasing agent for the Marine

Corps Supply Agency. In 1974, he was transferred to DISC. Since his retirement from the federal government, the petitioner has been employed as a salesman for Crazy Ned's Furniture and is presently a car salesman at McCarthy Ford.

10. The petitioner is married and has two married daughters, ages 31 and 29. He also has three grandchildren.

11. Throughout his life, the petitioner has been involved in numerous charitable organizations. He has been the entertainment director and charity director for Brith Shalom. He arranged shows and parties for the patients at Children's Hospital and at the Philadelphia Naval Hospital. He formerly was involved in recruiting, arranging for entertainment, and fundraising for the American Legion and the Jewish War Vets. He is also a Mason and a Shriner. He was also the EEOC chairman at DISC for two years. While the petitioner has been active in the past, he has not been involved in any of these activities during the last three years. Most of his time is spent working.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c.95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . . .
>
> N.J.S. 2C:5-2 (conspiracy to commit an offense which is listed in this subsection);
>
> . . . .

N.J.S. 2C:27-1 et seq. (bribery and corrupt influence);

. . . .

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey

residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

e. 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.

. . . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred,

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION

The Division contends, that the petitioner was convicted in federal district court of bribery in violation of 18 U.S.C. §201(c) which is analogous to a violation of N.J.S.A. 2C:27-7, compensating public servant for assisting private interests in relation to matters before him, and of conspiracy in violation of 18 U.S.C. §371 which is analogous to a violation of N.J.S.A. 2C:5-2, conspiracy, which constitutes violations of section 86c(1), and that, accordingly, he is disqualified from licensure.

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's acceptance of money and rigging of bids in order to award government contracts to specific companies constitutes violations of N.J.S.A. 2C:27-7 and N.J.S.A. 2C:5-2, which under the circumstances disqualifies the petitioner from licensure.

18 U.S.C. §201. Bribery of public officials and witnesses, provides in pertinent part:

. . . .

(c) Whoever -

(1) otherwise than as provided by law for the proper discharge of official duty -

. . . .

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

. . . .

shall be fined under this title or imprisoned for not more than two years, or both.

N.J.S.A. 2C:27-7, Compensating public servant for assisting private interests in relation to matters before him, provides in pertinent part:

> a. Receiving compensation. A public servant commits a crime if he knowingly, directly or indirectly, receives any benefit in connection with the furnishing to or for the government of any goods, supplies, property or services for which the agreement or contract is made, or the expense or consideration is paid, by the branch, subdivision or agency which employs the public servant.
>
> . . . .
>
> An offense proscribed by this section is a crime of the second degree. If the benefit solicited, accepted, agreed to be accepted, paid, offered or agreed to be paid is any benefit of $200.00 or less, an offense proscribed by this section is a crime of the third degree.

The Division established, and the petitioner admitted during his testimony, that he knowingly accepted money from Philadelphia Hardware in connection with furnishing goods to the government for which a contract was made. The Division further established, and the petitioner admitted during his testimony, that he was convicted in federal district court of bribery in violation of 18 U.S.C. §201(c). I **CONCLUDE** that the offense for which the petitioner was convicted in violation of 18 U.S.C. §201(c) is analogous to an offense of N.J.S.A. 2C:27-7. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:27-7. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:27-7, the offense constitutes a crime of the second degree.

18 U.S.C. §371, Conspiracy to commit offense or to defraud United States, provides in pertinent part:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons to any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

N.J.S.A. 2C:5-2, Conspiracy, provides in pertinent part:

> a. Definition of conspiracy. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:
>
> (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime;

. . . .

d. Overt act. No person may be convicted of conspiracy to commit a crime other than a crime of the first or second degree . . . unless an overt act in pursuance of such conspiracy is proved to have been done by him or by a person with whom he conspired.

. . . .

f. Duration of conspiracy. For the purpose of section 2C:1-6d:

(1) Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired;

The Division established, and the petitioner admitted during his testimony that he knowingly agreed with Mr. Wernovsky to accept money for fixing bids and awarding government contracts to Philadelphia Hardware in contravention of government competitive bidding requirements. The Division further established, and the petitioner admitted during his testimony, that he was convicted in federal district court of conspiracy in violation of 18 U.S.C. §371. I **CONCLUDE** that the offense for which the petitioner was convicted in violation of 18 U.S.C. §371 is analogous to an offense in violation of N.J.S.A. 2C:5-2. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:5-2. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:5-4a and N.J.S.A. 2C:27-7, the offense constitutes a crime of the second degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offenses committed by the petitioner are disqualifying offenses under sections 86c(1). The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1).

(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 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 or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

5. The age of the applicant when the offense or conduct was committed;

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

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

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.

In regard to the first criterion, Sidney W. Weiss is applying to become a casino licensee in order to be employed as a security employee in the casino industry. As such, he will not have direct responsibilities for actual gaming activities but will come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:27-7, compensating public servant for assisting private interests in relation to matters before him, and N.J.S.A. 2C:5-2, conspiracy, over at least a two-year period while employed by the federal government. Because the offenses are listed as disqualifiers under section 86c(1), they are very serious.

Third, the seriousness of the offenses must be viewed in their appropriate context. The petitioner as a buyer for DISC was responsible for purchasing spare parts critical to the maintenance of military aircraft and other strategic equipment. The petitioner controlled the entire bidding process by dictating bids and falsely creating higher bids in order to ensure that one company would get an award. This bidder was thereafter automatically resolicited. The petitioner breached his trust as a public official, violated competitive bidding requirements for personal gain, made it impossible for honest contractors to compete for certain contracts, and possibly increased costs to the government. Such a breach of the public trust is very serious and cannot be tolerated.

Fourth, the respondent's misconduct occurred between February 1978 and January 1983, when it ceased.

Fifth, the respondent was 55 years old at the time of the offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was not isolated in nature. It was a reoccurring course of conduct which continued over several years. In addition, the petitioner has one prior conviction from 1967 for selling football pools on federal property. The football pool was sponsored by Birth Shalom in order to raise money for Children's Hospital and the Naval Hospital. The petitioner was fined $75.00 for this offense.

Seventh, the petitioner felt compassion towards Mr. Wernovsky who recently had had a quadrupal bypass and had a son in college. As such, he agreed to assist Mr. Wernovsky in obtaining government contracts in exchange for monetary payments.

Eighth, the petitioner has made few rehabilitative efforts. He is still on probation and will remain so until April 1992. He is making satisfactory progress while on probation. He is paying his fine at a rate of $100 per month but still owes approximately $6300. His pension has been revoked in order to provide restitution to DISC. Throughout his life, the petitioner has been involved in numerous charitable organizations. He has been the entertainment director and charity director for Birth Shalom. He arranged shows and parties for the patients at Children's Hospital and at the Philadelphia Naval Hospital. He formerly was involved in recruiting, arranging for entertainment, and fundraising for the American Legion and the Jewis War Vets. He is also a Mason and a Shriner. He was also the EEOC chairman at DISC for two years. While the petitioner has been active in the past, he has not been involved in any of these activities during the last three years. Most of his time is spent working. Other than his satisfactory job performance and stated remorse, there is little evidence of his rehabilitation.

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

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Weiss was required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts

International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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 fact s 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that he was otherwise a person of good character, honesty and integrity. The misconduct did not involve any licensed employment. In addition, the petitioner has fully accepted responsibility for his misconduct, regained control over his behavior, performed admirably in furniture and automotive sales during the past three years, is married and is a respected member of his community. The petitioner's misconduct, however, relates directly to good character, honesty and integrity. He abused his position of public trust in order to manipulate the competitive bidding process for personal gain. Such actions cannot be tolerated. While the petitioner is remorseful, he is still on probation and insufficient time has passed in order to establish that he is truly once again a person of good character, honesty and integrity. Accordingly, the petitioner has not established that he presents no risk to the public nor to the integrity of the gaming industry in this State. The petitioner has not earned the privilege of licensure. An examination of the whole person does not clearly and convincingly establish that Mr. Weiss is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

IT IS **ORDERED** that the application of Sidney W. Weiss for the issuance of a casino employee license be **DENIED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 3, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

1/4/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 8 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter of Michael H. Renzulli, Renzulli's Pharmacy, undated

P-2 Letter of Charles Schnall, M.D., dated October 27, 1989

P-3 Letter of Joseph Goldberg, Joe Goldberg Jewelers, dated November 16, 1989

P-4 Letter of Allen Cooper, Loan Officer, Eagle National Bank, dated November 10, 1989

P-5 Letter of Donald Addis, True Sash Corporation, undated

P-6 Letter of Natalie H. Polonski and Albert Polonski, dated November 15, 1989

P-7 Letter of Mr. and Mrs. Thomas Peters, dated November 3, 1989

P-8 Letter of Edyth E. Silverman, dated November 14, 1989

P-9 Letter of Ronan A. Giehl, U.S. Probation Officer, dated October 27, 1989

P-10 Letter of Shirley Cohen, dated November 17, 1989

For the Respondent:

R-1 Arrest Warrant, United States District Court, Eastern District of Pennsylvania, dated May 9, 1986

R-2 United States District Court, Eastern District of Pennsylvania, Indictment No. 86-235, filed May 8, 1986

R-3 United States District Court, Eastern District of Pennsylvania, Order regarding Indictment No. 86-235, dismissing certain counts

R-4 Government's Sentencing Memorandum in Indictment No. 86-235, dated October 3, 1986

R-5 Personal History Disclosure Form - 2A

WITNESSES

For the Petitioner:

Sidney W. Weiss, the petitioner

For the Respondent:

Agent Daniel Keitt, Division of Gaming Enforcement

Sidney W. Weiss, the petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-428
LICENSE NO. 027820-21
OAL DOCKET NO. CCC 5155-89
ORDER NO. 90-14-5

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
JOANNE WILLIAMS a/k/a JOANN ELLIS

ORDER

A hearing 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 April 4, 1990,

IT IS on this 26th day of April 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY BB
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5155-89
AGENCY DKT. NO. 89-EA-428

JOANN WILLIAMS
a/k/a JOANN ELLIS,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Respondent.

Michael Mallin, Esq., for the petitioner

James Armstrong, Deputy Attorney General, for the respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: **February 6, 1990** Decided: February 20, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Joann Williams, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (blackjack dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, she lacked the requisite good character, honesty and

integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so she could be employed as a blackjack dealer at Caesar's Hotel and Casino. By letter to the Commission, dated May 26, 1989, the Division objected to the petitioner's application for licensure as a blackjack dealer, asserting that the petitioner had committed the offense of theft by deception in violation of N.J.S.A. 2C:20-4, which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on June 28, 1989, that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated July 8, 1989, which was received by the Commission on July 10, 1989, the petitioner requested a hearing. On July 12, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on July 17, 1989, 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 in the matter was held before Administrative Law Judge Lillard E. Law on October 5, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, Theft by Deception in the Third Degree.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on February 6, 1990, at the Municipal Courtroom, Pleasantville Police Building, Pleasantville, New Jersey, after which the record closed.

THE FACTS

In 1981, the petitioner obtained a casino employee license from the Commission, and she became employed as a blackjack dealer at the Claridge Hotel and Casino. She remained in this position until January 1984. Her car broke down on the Atlantic City Expressway so she reported to work five minutes late. When she explained the situation to management, she was told she was rude and insubordinate and was fired.

On January 27, 1984, the petitioner filed a claim for unemployment benefits with the Division of Unemployment and Disability Insurance (Division of Unemployment) (R-1, R-2, R-3 and R-4). The basis of the petitioner's claim was that she had been terminated from her position at the Claridge. The petitioner was determined to be eligible for benefits in the amount of $170 per week (R-2 and R-3). The petitioner collected unemployment benefits through September 1, 1984, at which time her benefits terminated (R-3).

From May through August 1984, the petitioner was employed as a change person at the Trump Plaza Hotel and Casino and was therefore an employee of the Harrah's Atlantic City Corporation (R-1 and R-4). The petitioner knew it was wrong to continue to collect unemployment benefits. She continued to collect benefits because she was behind in her bills. She had been disqualified from receiving benefits for six weeks after her initial claim, and she had fallen behind in paying her rent, gas, electric and other bills (R-3). Her husband had deserted her and her two children, and she was thus the sole support for her family. Her main concern was to provide a home for her children, and keep her children from "going on the street." When her initial benefits period expired, she did not apply for extended benefits. Because the petitioner failed to notify her local unemployment office of her employment, she received unemployment benefits to which she was not entitled in the amount of $2,380.00 (R-1, R-2, R-3 and R-4).

The Department of Labor notified the petitioner that it would be conducting a hearing concerning the unemployment benefits she had received from May 26, 1984 through August 25, 1984, during which period the petitioner had been employed. The petitioner failed to attend the hearing as the notice had been sent to her prior

address, and the Department of Labor thereafter made a determination in the case based on the record. On July 26, 1985, the Department determined that the petitioner had received unemployment benefits in the amount of $2,380.00 which she was not entitled to receive, and it imposed a fine of $595.00 for a total claim of $2,975.00 plus interest (R-1).

On August 23, 1985, the Division of Unemployment filed a certificate of debt against the petitioner in the Superior Court of New Jersey. On November 8, 1985, a judgment was entered against the petitioner in the amount of $2,975.00 (R-5). The petitioner's state income tax refunds in the amount of $178.88 in 1986 and $208.00 in 1988 were withheld pursuant to a SOIL attachment (R-4).

In May of 1984, the petitioner moved from her Doughty Road address to an Old Zion Road address. In 1986, the petitioner moved to a Main Street address. The petitioner did not receive any correspondence from the Division of Unemployment as all of the correspondence was mailed to the Doughty Road address. As such, she had no notice of the claim or the judgment.

In September 1988, the petitioner was contacted by a Division investigator and was questioned regarding her unlawful receipt of unemployment benefits. Thereafter, on October 18, 1988, the Division of Unemployment filed a criminal complaint against the petitioner in the Atlantic City Municipal Court charging her with theft by deception of $2,380.00 in violation of N.J.S.A. 2C:20-4 (R-6). After review by the Atlantic County Prosecutor's Office, the charges were returned to the Atlantic City Municipal Court for disposition at that level. On October 27, 1988, the petitioner pleaded guilty to the amended and reduced charge of theft by unlawful taking in violation of N.J.S.A. 2C:20-3.[1] The petitioner was sentenced to be incarcerated for 60 days and to pay a $100 fine. Both of these portions of her sentence were suspended. She was placed on probation for two years, was ordered to pay a $30 Violent Crimes Compensation Board penalty, $25 in court costs, and to make restitution of $3,503.31 at a rate of $200 per month (R-6 and R-7).

The petitioner is presently 40 years old and was 34 years old at the time of the offense. She was raised in Newark by her mother and father. She entered the

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1 Municipal Courts have jurisdiction over, inter alia, disorderly persons and petty disorderly persons offenses. See, N.J.S.A. 2A:8-21.

twelfth grade, but she did not graduate. She is the sole support for her two sons. In late August 1984, the petitioner was hired as a floor cashier at Caesar's Hotel and Casino. After two years, she was promoted to a blackjack dealer. For the last five and one-half years, she has had a good attendance and work record at Caesar's.

The petitioner presented seven letters in her behalf. The first, written by Katrina Bond, the petitioner's probation officer, indicates that the petitioner is reporting as directed and making regular restitution payments. Officer Bond concludes that the petitioner "is abiding by the conditions of her probation and has remained problem and arrest free" (P-2).

The second, dated January 4, 1990, was written by Craig Isaia, casino administration director, Caesar's Atlantic City. After stating the petitioner's employment history, Mr. Isaia states that as a blackjack dealer, the petitioner's annual performance reviews have reflected fully satisfactory scores (P-3).

The third, dated February 1, 1990, was written by Althea Williams, a blackjack floorperson at Caesar's. Ms. Williams wrote that she has known the petitioner for four years. She states that the petitioner's character is above reproach, that she is familiar with the petitioner's unemployment situation and that the reason the petitioner kept the unemployment benefits was to provide for her family as she is a single mother (P-4). Both Lynda Henson and Donna Mazzali are pit managers at Caesar's and wrote letters similar to that of Ms. Williams (P-5 and P-6).

The sixth, dated February 6, 1990, was written by Lenore Rowley. Ms. Rowley writes:

> I have known Joann Williams for quite a number of years. During that time Joann has shown herself to be a very dedicated mother and a caring friend. Also during that time she found herself to be in a very difficult financial situation. Raising two sons alone on an unemployment check could not meet all the needs of the growing boys. This is when Joann got a job to supplement the check. The extra income was used to help clothe and care for her family. Never was any of this money used for anything but her family. Joann is not, and never has been, a drug user alcohol abuser or a woman to run the streets. The majority of her activities, even today, include her family.
>
> Since that time, Joann has been paying on the amount owed to the unemployment by way of a casino licensed job, a dealer. Being the straightforward person that she is, she did not try to hide this fact. Because of this her license is in jeopardy. Without the license she cannot obtain a decent job to maintain her family. With

> the license, she cannot only maintain her family but also keep her self-respect and remain an asset to her job, her family, her friends and to society. [P-7]

Finally, in a letter dated January 30, 1990, Jesse Dully of Prestige Productions writes:

> I'm a real good personal friend of Joann's. I've known Joann and her two children for about six years. For the time that I've known her, she has always provided a good home and a positive image for her kids.
>
> I understand she's having problems with the State of New Jersey and the Casino Control Commission because she collected unemployment payments while she was working. I feel Joann has paid the price for what she had done. If you look at her work record, you will see she is a good worker. Joann has been with the same company for many years. As you know, a Casino License plays a big part in a person's life if that person works in Atlantic City's gaming industry. A number 21 gaming license can change a person's way of life. Joann understands what she did was wrong. She's paying back all the money plus fines. With all this in mind, please give Joann Williams her Casino License so she can continue to work and provide for her family. [P-8]

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, 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:

a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

. . .

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

(1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978 c.95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . .

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

. . .

g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of

business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . .

e. 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.

. . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(8) Any evidence or 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.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by deception - third degree, which constitutes a violation of section 86c(1), and that, accordingly, she is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86C(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of $500 between May 26, 1984 and August 25, 1984 inclusive while she was employed by the Trump Plaza Hotel and Casino constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:20-4, Theft by deception, provides:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

This statute has been held applicable where one wrongfully receives unemployment benefits. In State v.Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

> As we read the trial judge's findings, defendant knowingly misrepresented his employment status to obtain money "under pretense that he is . . . out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.[1] It is not necessary to prove a "corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super, 137, 141-143 (App. Div.), certif, den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked - or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

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1 N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

The Division established, and the petitioner admitted during her testimony, that she knowingly received unemployment benefits to which she was not entitled from the New Jersey Department of Labor. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)(a), the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

(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 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 or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

5. The age of the application when the offense or conduct was committed;

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

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

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.

In regard to the first criterion, Ms. Williams is a casino licensee and is employed as a blackjack dealer. As such, she does have direct responsibilities for actual gaming activities and does come in contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by Deception - third degree, over a three-month period during which she was employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. The petitioner's husband deserted the family and did not contribute any further to the support of the family. The petitioner fell behind in paying her bills as she did not receive any unemployment benefits for six weeks after losing her job. She was simply concerned with providing for her family in a time of crisis. These circumstance converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tends to mitigate somewhat the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from the end of May 1984 until the end of August 1984, when it ceased.

Fifth, the respondent was 34 years old at the time of the offense. I do not believe immaturity was a factor in this case.

Sixth, while the offense was an ongoing offense over a three-month period, the petitioner's misconduct was isolated in nature. She has not committed any other violations of the criminal laws.

Seventh, because of the underlying circumstances, the petitioner was only concerned with raising and providing for her family. The family's security and her financial situation were her major concerns. The petitioner states that such conduct will not occur again. She is now a responsible, productive member of society. In addition, it is clear that the underlying circumstances affected the petitioner's ability to deal reasonably with the problem at that time.

Eighth , the petitioner has made substantial rehabilitative efforts. She has made full restitution of both the unemployment benefits wrongfully taken and the fine, and is now repaying her interest penalties. The petitioner has been employed in the casino industry continuously since August 1984. Her performance has been exemplary. She has advanced from a floor cashier to a blackjack dealer. She has demonstrated that she has matured and has accepted responsibility. The petitioner has expressed remorse for, and has no intention of repeating, her misconduct. Accordingly, there is little likelihood, if any, of a repetition. Essentially, there is nothing more the petitioner could do to establish her rehabilitation.

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

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Williams 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 Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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 objections 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that she is otherwise a person of good character, honesty and integrity. The misconduct did not involve her licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner

has full accepted responsibility for her misconduct, regained control over her behavior, performed admirably within the casino industry during the past five and one-half years, is raising two children, and has become a respected member of her community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Ms. Williams is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Joann Williams for the renewal of casino employee license no. 27820-21 be **GRANTED**.

This recommended decision may be adopted, 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 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 5155-89

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

February 20, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

2/21/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 23 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Envelope, dated May 1, 1985, addressed to J. Ellis at Old Zion Road

P-2 Letter of Katrina Bond, Atlantic County probation officer, dated January 18, 1990

P-3 Letter of Craig Isaia, casino administration director, Caesars Atlantic City, dated January 4, 1990

P-4 Letter of Althea Williams, blackjack floorperson, Caesars Atlantic City, dated February 1, 1990

P-5 Letter of Lynda A. Henson, pit manager, Caesars Atlantic City, dated February 1, 1990

P-6 Letter of Donna M. Mazzali

P-7 Letter of Lenore Rowley, dated February 6, 1990

P-8 Letter of Jesse Dully, Prestige Productions, dated January 30, 1990

For the Respondent:

R-1 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund of Unemployment or Disability Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation, re: Joann Ellis, mailed July 26, 1985

R-2 Schedule of overpayments

R-3 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: Joann Ellis, as of April 22, 1985

R-4 New Jersey Department of Labor - LOOPS Claimant Inquiry, dated July 29, 1988

R-5 Certificate of Debt, filed August 23, 1985 and judgment entered November 8, 1985

R-6 Atlantic City Municipal Court Complaint filed October 18, 1988, and judgment of conviction entered October 27, 1988

R-7 Municipal Court Order, dated October 27, 1988

R-8 Petitioner's Employee License Renewal Application

WITNESSES

For the Petitioner:

Joann Williams, the petitioner

For the Respondent:

None

CASINO CONTROL COMMISSION DECISIONS

JULY - DECEMBER 1990

A - L

PREPARED BY THE LEGAL DIVISION

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3	3. State of New Jersey v. Adamar of New Jersey, Inc., t/a TropWorld Casino and Entertainment Resort, David Linnett, Joseph Carson, Robert Binstein and Lisa Elizardo	OAL CCC 04659-89 Agency 89-346	12/11/90 (Linnett only)	39
4	4. Application for renewal of the casino employee license of Toni Arabia	OAL CCC 07630-89 Agency 90-EA-87	11/01/90	59
5	5. Application of Bakely Signs, Inc., t/a Electro Signs for a casino service industry license and Qualification of Charles C. Bakely, Sr.	OAL CCC 05313-90 Agency 90-CSI-23	09/20/90	79
6	6. State of New Jersey v. John E. Ball	OAL CCC 03185-90 Agency 90-379	12/28/90	94
7	7. State of New Jersey v. Richard A. Barber	OAL CCC 07103-88 Agency 84-402	12/04/90	109
8	8. Application for renewal of the casino employee license of Kenneth A. Barts	OAL CCC 09352-89 Agency 90-EA-169	09/27/90	120
9	9. State of New Jersey v. Melinda R. Batts	OAL CCC 04973-89 Agency 89-332	12/04/90	138
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	~~12.~~ State v. Rachel Bogatin (See, State v. Boardwalk Regency Corp.)			150
11	~~13.~~ State of New Jersey v. John Bojazi	OAL CCC 02999-90 Agency 90-371	12/06/90	184
12	~~14.~~ Application of Vanessa R. Bonaparte for a casino employee license	OAL CCC 09351-89 Agency 90-EA-156	11/01/90	192
13	~~15.~~ Application for renewal of the casino employee license of Christian D. Bosquez	OAL CCC 01968-90 Agency 90-EA-257	12/09/90	200
14	~~16.~~ Application of Robert J. Bostic, Sr. for a casino employee license	OAL CCC 09742-89 Agency 90-EA-186	12/03/90	215
15	~~17.~~ Application for renewal of the casino employee license of Angela E. Brown	OAL CCC 06954-89 Agency 90-EA-63	12/11/90	225
16	~~18.~~ Application for renewal of the casino employee license of Donna M. Burnett	OAL CCC 04730-89 Agency 89-EA-421	10/18/90	233
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17	~~21.~~ Application of Craig M. Cassick for a casino employee license and State of New Jersey v. Craig M. Cassick	OAL CCC 01817-90; CCC 09545-89 (Consolidated) Agency 90-EA-157; 90-317	11/01/90	248

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19 ~~23.~~	Application for renewal of the casino employee license of Betty J. Corbin	OAL CCC 05846-89 Agency 90-EA-16	12/03/90	272
20 ~~24.~~	Application for renewal of the casino key employee license and the position addition of sole owner/ operator junket enterprise and gaming school instructor license of Daniel J. Costandino, Jr. and State of New Jersey v. Daniel J. Costandino, Jr.	OAL CCC 05080-89 Agency 89-EA-441; 89-399	07/22/90	292
21 ~~25.~~	Application of Shirley E. Davis for a casino employee license	OAL CCC 07958-89 Agency 90-EA-103	10/24/90	316
22 ~~26.~~	State of New Jersey v. Armond R. DeCicco	OAL CCC 04959-86 CCC 07979-85 (on remand) Agency 83-347	07/24/90	326
23 ~~27.~~	Application for renewal of the gaming school instructor and casino key employee licenses of Peter G. Demos, Jr. and State of New Jersey v. Peter G. Demos, Jr.	OAL CCC 07445-89 Agency 88-CSI-18; 88-94	11/13/90	340
24 ~~28.~~	State of New Jersey v. Jean Ann DeGraw	OAL CCC 07263-89 Agency 88-44	09/05/90	373
25 ~~29.~~	State of New Jersey v. Marta Diaz, a/k/a Lares	OAL CCC 08611-89 Agency 90-114	12/06/90	386
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29	~~36.~~ State of New Jersey v. Paul Faulkner, III	OAL CCC 09349-89 Agency 90-160	12/27/90	429
30	~~37.~~ State of New Jersey v. Vincent L. Farina	OAL CCC 2075-89 Agency 87-303	09/21/90	438
31	~~38.~~ State of New Jersey v. Hector A. Feliciano, Jr.	OAL CCC 00727-90 Agency 89-362	12/18/90	460
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32	~~40.~~ State of New Jersey v. Javier Feliciano	OAL CCC 08412-89 Agency 89-342	09/26/90	466
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37 ~~46.~~	Application for renewal of the casino employee license of Dennis C. Gorman	OAL CCC 05721-89 Agency 89-EA-445	11/26/90	540
38 ~~47.~~	State of New Jersey v. Leonard Grate	OAL CCC 00611-90 Agency 85-158	08/10/90	560
39 ~~48.~~	State of New Jersey v. Greate Bay Hotel and Casino, Inc., t/a Sands Hotel, Casino and Country Club	OAL CCC 05720-89 Agency 90-14	11/15/90	579
40 ~~49.~~	Greate Bay Hotel & Casino, Inc., t/a Sands, and Resorts International Hotel, Inc. v. State of New Jersey, Casino Control Commission	OAL CCC 03018-89; 03019-89; 09257-89 Agency 90-M-3	12/10/90	602
41 ~~50.~~	Application of Anthony L. Gulite, Jr. for a casino employee license	OAL CCC 00847-90 Agency 90-EA-210	11/30/90	618
42 ~~51.~~	Application of Michael Helgeland for a casino employee license	OAL CCC 08224-89 Agency 90-EA-104	11/01/90	627
43 ~~52.~~	Application of James H. Henderson for a casino employee license and State of New Jersey v. James H. Henderson	OAL CCC 04890-89 Agency 89-EA-440; 89-422	07/13/90	635
~~53.~~	Maria E. Hernandez (See, Application of Maria E. Vanegas and State v. Maria E. Vanegas)			1442

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47 ~~59~~.	Application of William Lee James for a casino employee license	OAL CCC 08380-89 Agency 90-EA-78	11/08/90	697
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50 ~~62~~.	Application for renewal of the casino employee license of Charles E. Laird	OAL CCC 09175-89 Agency 90-EA-66	10/25/90	722
51 ~~63~~.	Application of Laman-Loesche Supply Company, Inc. for a casino service industry license	OAL CCC 06530-89; CCC 08993-89 Agency 90-CSI-1	09/26/90	729
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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-115
APPLICATION NO. 076738-22
OAL DOCKET NO. CCC 00432-90
ORDER NO. 90-36-6

APPLICATION OF DOMENIC ACILIO
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 September 12, 1990,

IT IS on this 27th day of November 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 432-90
AGENCY DKT. NO. 90-EA-115

DOMENIC ACILIO,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Domenic Acilio, petitioner, pro se

James J. Armstrong, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: July 23, 1990 **Decided:** August 3, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Domenic Acilio, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had committed a disqualifying offense under N.J.S.A. 5:12-86c(1), by means of section 86g, and he therefore lacked the requisite good character, honesty, and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a heating and air conditioning mechanic at Trump Taj Mahal. By letter to the Commission, dated September 27, 1989, the Division objected to the petitioner's application for licensure as a maintenance and cleaning person asserting that the petitioner had committed the offense of theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89b(2). Based upon the report, the Commission notified the petitioner on November 2, 1989 that questions had been raised concerning his qualification for licensure under the Casino Control Act (Act) and that he had the right to a hearing. By application dated January 10, 1990, which was received by the Commission on January 16, 1990, the petitioner requested a hearing. On January 16, 1990, the Commission transmitted the matter to the Office of Administrative Law, which received it on January 19, 1990, 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 in the matter was held before me on April 17, 1990. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-3, theft by unlawful taking.

B. Whether the petitioner possesses the requisite good character, honesty, and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on July 23, 1990, at the Municipal Courtroom, Somers Point Municipal Building, Somers Point, New Jersey, after which the record closed.

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FACTUAL DISCUSSION

On May 10, 1985, while on patrol in the parking lot of Malibu Grand Prix in Mt. Laurel, New Jersey, a Mt. Laurel policeman saw what appeared to be an empty black truck. The officer then saw two heads appear in the windows. The officer approached the truck, smelled a strong odor of marijuana, and saw a wooden pipe and a plastic bag containing a white, powdery substance. The officer arrested the owner of the vehicle, Anthony Bucci, and the petitioner, who was a passenger in the vehicle. The officer searched the vehicle and found a plastic bag in the glove compartment containing marijuana, a marijuana roach in the ashtray, a pipe containing marijuana residue, and a plastic bag containing methamphetamine (R-2).

On May 11, 1985, the petitioner was charged with possession of a controlled dangerous substance (marijuana less than 25 grams), in violation of N.J.S.A. 24:21-20a4, and possession of a controlled dangerous substance (methamphetamine), in violation of N.J.S.A. 24:21-20a1 (R-3). On May 13, 1985, the case was referred to the county prosecutor's office for review (R-3). On June 11, 1985, after review by the county prosecutor's office, the charges were downgraded to disorderly persons offenses and were returned to municipal court for disposition (R-3). On September 17, 1985, the petitioner received a conditional discharge of the charges. The petitioner was placed on probation for two years, received a $125 fine on the marijuana charge and a $200 fine on the methamphetamine charge, and was ordered to pay $25 court costs on each count and a $30 Violent Crimes Compensation Board penalty on each count (R-3). The petitioner completed his probationary period on September 17, 1987 (R-1).

On October 28, 1986, the petitioner was employed by the Sterile Products Division of Absorbent Cotton, Inc., in Hammonton, New Jersey. That evening, the petitioner was drinking with another employee, John Mastro. Earlier that day, Mr. Mastro had discussed with another employee the idea of stealing scales from the Sterile Products Division (R-4). At approximately 1:15 a.m. on October 29, 1986, Mr. Mastro had the petitioner accompany him to the plant to commit a break-in and steal something. The petitioner accompanied Mr. Mastro to the plant and helped Mr. Mastro enter the plant. The two took two scales from the plant. One scale was a digital gram scale valued at $1,375 and the other was a double beam scale valued at $110 (R-4 and R-5). On October 30, 1986, Sergeant Robert Frederico of the Hammonton Police Department interviewed various employees at the plant. The

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petitioner first denied knowledge of the break-in but later admitted his involvement (R-4).

On October 30, 1986, the petitioner was charged in Hammonton Municipal Court with burglary, in violation of N.J.S.A. 2C:18-2, theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, and receiving stolen property, in violation of N.J.S.A. 2C:20-7 (R-5). The receiving stolen property charge was dismissed on November 10, 1986, as the charge is subsumed in the offense of theft by unlawful taking (R-5). On November 18, 1986, the petitioner was indicted by the Atlantic County Grant Jury in the Superior Court of New Jersey, Law Division (Criminal), Atlantic County, Indictment No. 86-11-2306-D and was charged with burglary, in violation of N.J.S.A. 2C:18-2, theft by unlawful taking (third degree), in violation of N.J.S.A. 2C:20-3, and conspiracy to commit burglary (third degree), in violation of N.J.S.A. 2C:5-2 (R-6). On December 22, 1986, the petitioner pleaded guilty to the conspiracy count of the indictment (R-7). On January 16, 1987, the petitioner was convicted of the conspiracy count and the remaining two counts were dismissed. The petitioner was placed on probation for two years, was fined $250, and was ordered to pay a $30 Violent Crimes Compensation Board penalty (R-7). The petitioner was released early from his probationary supervision in May 1988 (R-1).

The petitioner was born in Italy in 1965, and he is 25 years old. His parents emigrated to the United States that year, and the petitioner was raised in Hammonton, New Jersey. The petitioner is now a naturalized United States citizen. His family consisted of his parents and his two brothers and two sisters. The petitioner attended Hammonton High School, but he did not graduate. He received his high school diploma by attending Vineland Adult Education in the evenings. The petitioner is married, and the couple is expecting their first child.

At the age of 17, the petitioner obtained a casino hotel employee registration. He worked at Bally's Park Place from 1982 through 1986. In 1986, the petitioner had to accompany his mother to Italy in order to get his younger sister. As he did not have any vacation time accrued, he resigned his position at Bally's Park Place. The petitioner then entered a one-year training program in heating, air conditioning, and refrigeration at Lincoln Technical Institute. He graduated in the fall of 1987. Over the next two years, the petitioner was continuously employed by four employers in the heating and air conditioning industry. He was injured in an automobile accident in March 1989 and was unemployed for six months. He then attended the Casino Career Institute and completed the course for blackjack dealers.

In March 1990, the petitioner became employed as a heating, air conditioning, and refrigeration mechanic at the Trump Regency Hotel. He left that position on July 9, 1990, and began employment at the Trump Taj Mahal Hotel and Casino.

Mr. Acilio submitted five letters in his behalf. The first, written by Rev. Joseph Mungari, pastor of St. Joseph's Church, describes Mr. Acilio as a person of good character who is very responsible (R-1). The second, written by a former employer, Charles R. Sceia, Jr. of Charles R. Sceia Construction, describes Mr. Acilio as a person who would be an asset to any organization. Mr. Sceia states that Mr. Acilio "has a strong sense of responsibility, a willingness to cooperate with coworkers, and adapts well to new situations he encounters" (P-2).

The third letter, written by Ed Lindsey, maintenance supervisor at the Trump Regency and dated June 19, 1990, provides:

> Domenic has proved to be a very capable and competent Refrigeration/HVAC Mechanic during his employment at the Trump Regency Hotel.
>
> While under my direction, Domenic has performed various duties and responsibilities with the utmost professionalism and I feel he would be an asset to any organization he may persue [sic]. [P-3]

The fourth letter is written by Joseph Caronte, a slot technician at Trump's Castle who has known Mr. Acilio for 20 years. Mr. Caronte describes Mr. Acilio as a "well mannered, ambitious young man, who is eager to achieve his goals in his chosen field" (P-4).

The final letter was written by Michael L. Testa, Esq., of Basile, Testa & Testa. Mr. Testa has represented the petitioner in various legal matters. Mr. Testa states that:

> I have recognized that Dominic has matured greatly since I first met him and has had a positive change in his attitude and outlook for the future. He has recently gotten married and is expecting a child in the near future. These factors have contributed to his maturity.
>
> Despite the fact that Dominic may have exhibited poor judgment in the past that resulted in a legal problem, I feel that that is behind him. I feel that Dominic has rehabilitated himself and that he does not pose a threat as a repeat offender. [P-5]

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty, and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings, and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in substantial regard. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in substantial part. I am persuaded that his misconduct was, in part, due to immaturity.

FINDINGS OF FACT

1. On May 10, 1985, the petitioner was arrested in Mt. Laurel, New Jersey, for possession of marijuana and methamphetamine.

2. On May 11, 1985, the petitioner was charged with possession of a controlled dangerous substance (marijuana less than 25 grams), in violation of N.J.S.A. 24:21-20a4, and possession of a controlled dangerous substance (methamphetamine), in violation of N.J.S.A. 24:21-20a1.

3. On June 11, 1985, after review by the county prosecutor's office, the charges were downgraded to disorderly persons offenses and were returned to municipal court for disposition.

4. On September 17, 1985, the petitioner received a conditional discharge of the charges. The petitioner was placed on probation for two years, received a $125 fine on the marijuana charge and a $200 fine on the methamphetamine charge, and was ordered to pay $25 court costs on each count and a $30 Violent Crimes Compensation Board penalty on each count. The petitioner completed his probationary period on September 17, 1987.

5. On October 28, 1986, the petitioner was employed by the Sterile Products Division of Absorbent Cotton, Inc., in Hammonton, New Jersey. That evening, the petitioner was drinking with another employee, John Mastro.

6. At approximately 1:15 a.m. on October 29, 1986, Mr. Mastro had the petitioner accompany him to the plant to commit a break-in and steal two scales from the plant. One scale was a digital gram scale valued at $1,375 and the other was a double beam scale valued at $110.

7. On October 30, 1986, the petitioner was charged in Hammonton Municipal Court with burglary, in violation of N.J.S.A. 2C:18-2, theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, and receiving stolen property, in violation of N.J.S.A. 2C:20-7 (R-5). The receiving stolen property charge was dismissed on November 10, 1986, as the charge is subsumed in the offense of theft by unlawful taking.

8. On November 18, 1986, the petitioner was indicted by the Atlantic County Grant Jury in the Superior Court of New Jersey, Law Division (Criminal), Atlantic County, Indictment No. 86-11-2306-D and was charged with burglary, in violation of N.J.S.A. 2C:18-2, theft by unlawful taking (third degree), in violation of N.J.S.A. 2C:20-3, and conspiracy to commit burglary (third degree), in violation of N.J.S.A. 2C:5-2.

9. On January 16, 1987, the petitioner was convicted of the conspiracy count and the remaining two counts were dismissed. The petitioner was placed on probation for two years, was fined $250, and was ordered to pay a $30 Violent Crimes Compensation Board penalty. The petitioner was released early from his probationary supervision in May 1988.

10. The petitioner was born in Italy in 1965, and he is 25 years old. His parents emigrated to the United States that year, and the petitioner was raised in Hammonton, New Jersey. The petitioner is now a naturalized United States citizen. His family consisted of his parents and his two brothers and two sisters.

11. The petitioner attended Hammonton High School, but he did not graduate. He received his high school diploma by attending Vineland

8

Adult Education in the evenings. The petitioner is married, and the couple is expecting their first child.

12. At the age of 17, the petitioner obtained a casino hotel employee registration. He worked at Bally's Park Place from 1982 through 1986. In 1986, the petitioner had to accompany his mother to Italy in order to get his younger sister.

13. In 1986, the petitioner entered a one-year training program in heating, air conditioning, and refrigeration at Lincoln Technical Institute. He graduated in the fall of 1987.

14. Over the next two years, the petitioner was continuously employed by four employers in the heating and air conditioning industry. He was injured in an automobile accident in March 1989 and was unemployed for six months.

15. The petitioner then attended the Casino Career Institute and completed the course for blackjack dealers.

16. In March 1990, the petitioner became employed as a heating, air conditioning, and refrigeration mechanic at the Trump Regency Hotel. He left that position on July 9, 1990, and began employment as a heating, air conditioning, and refrigeration mechanic at the Trump Taj Mahal Hotel and Casino.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . .

9

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

(1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . .

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

. . .

g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

. . .

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and

principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . .

e. 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.

. . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses

enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking (third degree), which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction

which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends, by means of section 86g, that the petitioner's theft of two scales from his employer, the Sterile Products Division of Absorbent Cotton, Inc., constitutes a violation of N.J.S.A. 2C:20-3, which under the circumstances disqualifies the petitioner from licensure.

N.J.S.A. 2C:20-3, theft by unlawful taking, provides in pertinent part:

> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

The Division established, and the petitioner admitted during his testimony, that he knowingly participated in the burglary and theft of two scales from the Sterile Products Division. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-3. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

(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 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 or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;

5. The age of the applicant when the offense or conduct was committed;

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

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

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.

In regard to the first criterion, Mr. Acilio is a non-gaming casino licensee and is employed as a heating, air conditioning, and refrigeration mechanic. As such, he does not have direct responsibilities for actual gaming activities and does not come in contact with casino patrons. While the petitioner seeks primary employment as a heating, air conditioning, and refrigeration mechanic, he has completed blackjack dealer training. If licensed, he hopes to have an additional credential as a blackjack dealer added to his license as a fall-back job opportunity. The petitioner's employer is requiring him to obtain a gaming license so he can have access to all areas of the casino in case there is a heating or air conditioning emergency.

Second, the respondent committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, on one occasion prior to his employment in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The petitioner was drinking with some of his coworkers. One coworker suggested breaking into their place of employment and committing a theft. The petitioner accompanied his friends and participated in the theft. When initially questioned, the petitioner denied committing the offense; however, he quickly recanted, gave a full confession, and cooperated with the police. As such, there are mitigating circumstances.

Fourth, the respondent's misconduct occurred in October 1986, when it ceased.

Fifth, the respondent was 20 years old at the time of the first offense and 21 years old at the time of the second offense. I believe immaturity was a factor in this case. The petitioner believes he has learned with maturity and that such conduct will

not occur again. He is now married and is a responsible, productive member of society.

Sixth, the respondent's misconduct was not isolated in nature. He has committed one other violation of the criminal laws. In 1985, he smoked marijuana with a friend in the friend's truck. He was convicted of a disorderly persons offense.

Seventh, the petitioner gave in to peer pressure. He has severed his association with all of the people with whom he formerly associated.

Eighth, the petitioner has made substantial rehabilitative efforts. He earned his high school diploma, he completed heating, air conditioning, and refrigeration training at Lincoln Technical Institute, and he completed blackjack dealer training at the Casino Career Institute. He has been employed the last three years in the heating and air conditioning industry. He has married, and is expecting his first child. He has demonstrated that he has matured and has accepted responsibility. The petitioner has expressed remorse for, and has no intention of repeating, his misconduct. Accordingly, there is little likelihood, if any, of repetition. Essentially, there is little more the petitioner can do to establish his rehabilitation.

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

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Acilio 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 Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty, and integrity. The misconduct did not involve his licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for his misconduct, regained control over his behavior, has attended educational training, has performed admirably within the heating and air conditioning industry during the past three years, is married, is expecting a child, and has become a respected member of his community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Acilio is a person of good character, honesty, and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty, and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Domenic Acilio for the issuance of a casino employee license be **GRANTED.**

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 3, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

8/6/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 10 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

mI/E

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter of Reverend Joseph Mungari, pastor, St. Joseph's Church, dated July 11, 1990

P-2 Letter of Charles R. Sceia Jr., dated July 14, 1990

P-3 Letter of Ed Lindsey, maintenance supervisor, Trump Regency, dated June 19, 1990

P-4 Letter of Joseph Caronte, dated July 6, 1990

P-5 Letter of Michael L. Testa, Esq., dated July 12, 1990

For the Respondent:

R-1 Division Investigation Summary Report, dated May 12, 1989

R-2 Mt. Laurel Township Investigation Report, Arrest Report, and Laboratory Report

R-3 Mt. Laurel Township complaints and prosecutor's downgrade authorization

R-4 Hammonton Police Department Investigation Report and petitioner's statement

R-5 Hammonton complaints, dated October 30, 1986

R-6 Atlantic County Indictment No. 86-11-2306-D, dated November 18, 1986

R-7 Judgment of Conviction, dated January 16, 1987

R-8 Personal History Disclosure Form - 2A

WITNESSES

For the Petitioner:

Domenic Acilio, petitioner

For the Respondent:

Agent Bruce C. Cooke, Division of Gaming Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-85
OAL DOCKET NO. CCC 8453-88
LICENSE NOS. 2890-11 (GALLAWAY)
62-11 (JAMES)
ORDER NO. 90-28-10

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

Complainant,

v.

ADAMAR OF NEW JERSEY, JOHN GALLAWAY
AND ROBERT JAMES

Respondents

A hearing 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 exceptions to the initial decision and a reply thereto having been filed; and the Commission having considered the entire record of these proceedings at its public meetings of May 2, 1990, and July 11, 1990;

IT IS on the 25th day of July 1990, ORDERED that, for the reasons fully set forth on the record at the public meeting of July 11, 1990, the initial decision is modified as follows;

1. The Commission finds Adamar liable for the violations alleged in Counts I, II, III, IV, V and VI of the Division's complaint. The recommended penalty of $35,000 for the violations in Count II is rejected. Instead, considering the

extensive and egregious violations of the credit and credit-related provisions of the Casino Control Act and its attendant regulations, Adamar is prohibited from extending credit to any patron for a period of two business days beginning 10:00 a.m. Saturday, August 18, 1990, and ending 6:00 a.m. Monday August 20, 1990;

2. The Commission adopts the findings of liability on Count II as to Robert James. However, the recommended sanction of $2,000 for Robert James is rejected and a monetary penalty of $5,000 is imposed; and

3. The Commission finds John Gallaway liable for the violations alleged in Counts III, IV and VI of the DGE's complaint. A monetary penalty of $10,000 is imposed; and

IT IS FURTHER ORDERED that payments of $5,000 from Robert James and $10,000 from John Gallaway are due and payable upon receipt of an invoice from the Division of Financial Evaluation and Control, and

IT IS FURTHER ORDERED that, in view of the finding of liability on Count III and disallowance of the $500,000 write-off, the Division of Financial Evaluation and Control shall ensure that the necessary adjustments are made to the Casino Revenue Fund.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8453-88
AGENCY DKT. NO. 89-85

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Complainant,
v.
ADAMAR OF NEW JERSEY, INC.,
d/b/a TROPICANA HOTEL/CASINO;
JOHN M. GALLAWAY, PRESIDENT
AND GENERAL MANAGER; AND
ROBERT M. JAMES, MARKETING
REPRESENTATIVE,
Respondents.

Denis J. Dooley, II, Deputy Attorney General, on behalf of complainant (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Mark H. Sandson, Esq., on behalf of respondents (Hankin, Sandson & Sandman, attorneys)

Record Closed: November 20, 1989 Decided: January 18, 1990

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

This matter arises out of charges filed by complainant with the Casino Control Commission alleging certain violations of the Casino Control Act N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. Respondents 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 hearing was conducted on July 24, 25, and August 30, 1989. The record closed on November 20, 1989 after receipt of the last posthearing submission. An extension of two weeks was then granted for the issuance of this initial decision pursuant to N.J.A.C. 1:1-18.8.

Complainant alleges that respondents violated credit and collection regulations in the conduct of business with Patron Edward Brian Rood, Sr. These violations involve; the extension of credit from March 25, 1986 through May 24, 1986, the failure to report returning counterchecks during the period June 20, 1986 through October 7, 1986 to Central Credit of Las Vegas (CCLV), the collection efforts that were made and those that should have been made but were not, the way in which the debt was ultimately settled, the reinstitution of credit on May 29, 1987 after the debt was settled, and finally the purchase of a complimentary Cadillac on June 29, 1988.

Most of the facts are either stipulated or undisputed. In November 1982, Patron Rood was granted a credit line at Tropicana in the amount of $100,000. Patron Rood was senior partner in the law firm of Rood & Associates located in Tampa, Florida. As of late February 1986, Patron Rood's credit account reflected a credit limit and outstanding balance of $850,000. On March 1, 1986, revisions to N.J.A.C. 19:45-1.27(a) became effective. This new credit regulation required casinos to obtain and verify additional information regarding a credit patron's identification and credit worthiness. From March 25, 1986 through May 24, 1986, Patron Rood received five permanent credit limit increases to his approved credit line. These increases raised his outstanding credit account from $850,000 to $1,350,000. At the time of each such increase, the credit department obtained derogatory information concerning Patron Rood from CCLV and from independent contact with several New Jersey casinos. These sources indicated that on each such occasion, Patron Rood had unpaid credit debts at six different New Jersey casinos totalling approximately $1,500,000, and that his credit accounts at these casinos had been cancelled in each case during 1985.

Mr. Rood's credit file contains an uncertified financial statement dated February 1985 which shows total net worth in excess of $41,000,000 and available cash of $180,000. Most of his wealth was in the form of real estate and oil wells. From 1982 until his checks began to return in June 1986, Patron Rood had gambled approximately $40,000,000 at Tropicana and had lost approximately $7,500,000.

On June 20, 1986, Patron Rood's credit account at Tropicana was suspended due to a returned check. From this date to October 7, 1986, a total of 24 counterchecks and personal checks totalling $1,225,000 were returned unpaid to Tropicana. Patron Rood also owed $225,000 to Tropicana West located in Las Vegas, Nevada.

On the same day that his first check returned, Tropicana's collection department established a collection file for Patron Rood. Entries in the file indicate that from this date until May 20, 1987, eight of ten collection statements sent, went to Robert M. James. Respondent James was vice president of casino operations at the time and was not a member of the collection department. Maureen Cullen Keenan, former collections manager, and Leanor A. Mazzeo-Amoriello, the current collections manager, confirmed in testimony that the file would have contained notations that collection statements were sent to Patron Rood had they been. Respondent John M. Gallaway in a memorandum of July 15, 1986 to Steven R. Bolson, Tropicana vice president and in-house counsel, referring to the Rood matter indicates that respondent James "was doing everything he can to work out an equitable arrangement with Patron Rood, in order to get the money owed us as soon as possible".

Former collections manager Keenan described respondent James role in the Rood matter as that of "a messenger" to prompt him to pay his outstanding debt. Lester Brzozowski, Vice President of Finance, with oversight responsibility for the collections department, referred to him as the "customer contact" and Steven Bolson testified that respondent James was a "middleman and contact person only". Respondent James and Patron Rood were personal friends. There is no indication in the file that collection efforts were made by anyone other than respondent James in the early months after checks began to return. Mr. James was not present at the hearing and did not testify.

There were 13 separate dates between June 20, 1986 and October 7, 1986, on which checks returned. The CCLV was not notified at all, and the file contains the notation "no derog" or similar language on five of these dates indicating that someone made a decision not to report the matter. Former collections manager Keenan testified that she did not make this decision, and was unaware of it, but that she had expected Patron Rood to come in and make good on these returned checks. When current collections manager Mazzeo-Amoriello took over the Department in

November 1986, she discovered the error and on December 3, 1986 reported to CCLV that $1,225,000 had returned.

In a memorandum dated July 25, 1986, Steven R. Bolson advised respondent Gallaway as to the status of collection efforts in Patron Rood's account. He opined that the matter was being handled in compliance with the regulatory framework, and that more aggressive and/or formal collection efforts were neither necessary or legally required at that time.

In a memorandum of October 16, 1986 to respondent Gallaway, Mr. Bolson again advised after a telephone call with Mr. Rood that real estate owned by Rood was in the process of being sold and that part of the proceeds would be used to pay Tropicana's debt. He recommended that Tropicana refrain from formal efforts to perfect a security interest in the property until the end of the year.

By December 11, 1986, Mr. Bolson was less sanguine. Tropicana retained Florida counsel, and in a letter of this date to counsel, Mr. Bolson set out the problem and expressed Tropicana's desire to perfect a security interest in real property owned by Mr. Rood. He noted that although Mr. Rood had represented his willingness to pay the debt in full, at this point formal steps toward this end had become necessary.

On December 17, 1986, collections manager Mazzeo-Amoriello and Mr. Bolson travelled to Florida to meet with counsel and Mr. Rood to inspect certain real estate and discuss repayment of the debt. During their meeting and for the first time, Mr. Rood raised the question of discounting $500,000 of his total debt of $1,450,000 in return for the security interest which Tropicana sought.

In January 1987, after considering the matter and receiving Mr. Bolson's advice that this would be legal, and the advice of the credit committee that it was prudent, respondent Gallaway approved the settlement. In a memorandum of January 13, 1987 Mr. Bolson informed Mr. Brzozowski that the appraisals received confirmed that the value of the land exceeded the debt. A note mortgage and escrow agreement were executed on January 20, 1987, and by their terms Patron Rood was obliged to pay $950,000 by June 15, 1987, or Tropicana would perfect a security interest in this real estate for the entire debt. In a memorandum of February 5, 1987 Mr. Bolson informed Mr. Brzozowski that the agreement had been executed. On

May 20, 1987, Patron Rood wired $950,000 to Tropicana. Respondent Gallaway applied $725,000 to the debt owed respondent Tropicana and paid in full the $225,000 to Tropicana West. On May 29, 1987, the $500,000 was written off as "bad debt" pursuant to a write off memorandum signed by respondent Gallaway. Florida counsel were paid $30,000 for their efforts.

From June 20, 1986 when his checks began to return, until May 29, 1987 when his credit was reinstated, Patron Rood was a cash player at Tropicana. The player trip history form for him shows that he played over 200 hours during this period, had an average bet of $2,179 and wagered a total amount of $805,000 in cash and $846,000 in chips.

On May 29, 1987 respondent Gallaway reinstated Mr. Rood's credit line at $50,000. The CCLV reports at the time indicated that Patron Rood owed a total of $1,170,000 to six Atlantic City casinos and his credit at these establishments continued to be suspended. Thereafter, Mr. Gallaway and the credit committee determined that Mr. Rood could lose no more than $100,000 in any weekend trip. From May 29, 1987 through May 13, 1988, Patron Rood received four permanent credit increases and one temporary credit increase at Tropicana which raised his credit limit to $330,000. During this period Patron Rood lost over $1,000,000 as a player. At each point that credit was increased, the CCLV reported to Tropicana that Patron Rood owed other casinos in the vicinity of $1,000,000. On June 22, 1988, checks drawn by Patron Rood on this reinstated credit line began returning. On June 23, 1988, credit was suspended and the derogatory information reported to CCLV. When all the checks had returned, Patron Rood owed Tropicana $330,000. The file reflects that monthly statements were now sent directly to Patron Rood and on October 17, 1988, Mr. Bolson advised him in a letter that unless payment was forthcoming, suit would be instituted. On February 9, 1989, an action was filed in Superior Court and a judgment was obtained for the amount in question. At the time of hearing, two payments of $5000 each, had been received by Tropicana.

On June 29, 1988, Tropicana wired funds to a Florida automobile dealer to provide a gift complimentary to Patron Rood of a 1988 Cadillac Eldorado. The purchase price was $25,122.81. The reason recorded in the file was "birthday gift-Ed Rood". To this point, the facts are undisputed.

Mr. Bolson testified that he became actively involved in the matter at Mr. Gallaway's request in the fall of 1986. He had many telephone conversations with Mr. Rood, in which Rood assured him that full payment would be forthcoming. They also discussed the possibility of a security interest in real property about to be sold in Florida by Mr. Rood, but when the sale was delayed, Mr. Gallaway sent him to Florida to see how he could move the matter along.

Mr. Bolson testified that his advice to Mr. Gallaway that the settlement was legal and proper was based on a number of factors. Tropicana had made substantial efforts to collect the entire debt but it was plain from his conversation with Mr. Rood in Florida that although he regretted the circumstances, if Tropicana wanted to secure its debt it would have to pay for that peace of mind. Mr. Bolson considered the fact that Mr. Rood was 72 years old, and in case of his death, Tropicana could expect a dispute with his heirs. Further, the debt would have to be collected in Florida, where there was some question at the time about the collectability of gambling debts. Finally even if formal collection efforts were instituted and were ultimately successful, Tropicana would expend large sums in attorney's fees and costs. Mr. Bolson had taken this same view with respect to Mr. Rood's debt in September 1985, when he wrote a memorandum on this same subject, although at that time no settlement took place.

Mr. Gallaway testified that he concluded reluctantly based on this advice and discussion at credit committee meetings, that a settlement was in Tropicana's best interest. He then reestablished Patron Rood's credit line at the patron's request but with limitations. He and the credit committee decided that no more than $100,000 in credit would be granted in any one weekend. This level of credit was justified by Patron Rood's net worth which was still substantial. When checks began to return again, Rood advised Tropicana that his assets were now effectively frozen as a result of judgments obtained by various Federal agencies, and that at this point he could not pay. He expressed a continuing desire to pay as soon as these difficulties were behind him.

Mr. Gallaway testified that during the entire period which bound these charges, Mr. Rood was always available, answered calls, and generally was open about his responsibilities. This is in sharp contrast to the norm at the debt collection end of the business. He and the other key personnel assisting in these credit

decisions considered Mr. Rood to be an honorable person and accountable to his word. This is the substance of the record.

THE EXTENSION OF CREDIT FROM MARCH 25, 1986 THROUGH MAY 24, 1986

(Count I, Tropicana)

N.J.A.C. 19:45-1.27(a) provides:

> A credit file for each patron shall be prepared by a general cage cashier or credit department representative with no incompatible functions either manually or by computer prior to the casino licensee's approval of a patron's credit limit. All patron credit limits and changes thereto shall be supported by the information contained in the credit file. Such file shall contain a credit application form upon which shall be recorded, at a minimum, the following information provided by the patron . . .

Petitioner, argues that the extensions of credit during this two month period were not warranted by the information in the credit file. Respondents knew that Mr. Rood's credit lines at other Atlantic City casinos were suspended and that he owed approximately $1,500,000. Although his uncertified financial statement shows substantial net worth, he had but $180,000 in cash. Respondents argue first, that the regulation does not authorize an inquiry into Tropicana's evaluation of Patron Rood's credit worthiness, rather, it requires only that the specific information sought after the regulatory preamble above, be contained in the file. Second, even if such an analysis is authorized, these decisions were well supported by Tropicana's long and financially rewarding history with Patron Rood, and by his net worth statement Finally, respondent believes that unless its decisions here were tainted or wholly incompetent, petitioner must show them deference.

As to the first of respondents' arguments, it seems plain that the regulation invites the inquiry being made here. Patron credit limits must be supported by the content of the credit file and it is not enough that the form simply contain the required information. There is no dispute here that Patron Roods form was complete; the question goes to the evaluation itself. As to the more substantive issue, there is support in the record for both parties' point of view. When credit was being expanded from $850,000 to $1,225,000, respondents were aware that Patron

Rood's credit was suspended elsewhere in Atlantic City. Mr. Bolson wrote a memorandum in 1985 discussing the legality of a settlement with Mr. Rood, evidencing Tropicana's awareness that all was not well in this account. Nevertheless, Patron Rood had been a premier customer for five years having gambled some $40,000,000 and lost $7,500,000. Moreover, the accuracy of Rood's financial statement was not attacked in this proceeding other than to note that it was not certified. Thus, all indications are that Patron Rood was a man of great wealth and might be expected to handle this level of credit. Finally, and importantly, Gallaway, Bolson and the other witnesses, who appeared on behalf of Tropicana testified credibly that they had always known Rood to be a man of his word.

Different casino executives might well have come to different conclusions about Patron Rood's ability to handle his growing gambling debt. We know that other casinos cut him off, although we do not know his player history elsewhere Ms. Panton, petitioner's investigator in this matter, acknowledged that she has never granted casino credit and neither is this forum particularly expert in this regard. The only witnesses with experience in this area were presented by Tropicana. The March 1, 1986 revised regulations sought to provide casinos with additional information about players, so that their ability to repay credit could be more accurately gauged, and so as to deter credit frauds. See 17 N.J.R. 181, January 21, 1985. The rule change did not eliminate the need to make close decisions. If Patron Rood's fortunes had taken a different turn and he paid his debt in full, we might have looked on these credit extensions as a sensitive balancing of the needs of a longtime patron, with Tropicana's desire for security and player retention. I cannot say therefore that these decisions were unsupported by the credit file, and it appears that some deference is appropriate here. Count One of the Complaint is dismissed

THE FAILURE TO NOTIFY CCLV FROM JUNE 20, 1986 TO OCTOBER 7, 1986

(Count 2, Tropicana)

N.J.A.C. 19:45-1.27(j) provides:

> Any patron having a check returned to any casino unpaid by the patron's bank shall have his credit privileges suspended at all New Jersey casinos until such time as the returned check has been paid in full or the reason for the derogatory information has been satisfactorily explained. All derogatory

> information concerning a patron's credit account shall be reported by each casino licensee on a daily basis to a casino credit bureau used by New Jersey casinos.

There is no dispute that during the period in question Tropicana did not notify CCLV about Patron Rood's returning checks. Petitioner believes that this was intentional and part of a broader strategy to tread softly around Patron Rood. It points to the fact that these reporting failures occurred on 13 separate days over four months, and that on five occasions the file contains the reference "no derog" or similar language. Ms. Maureen Cullen-Keenan, the former collection manager, could not recall why such entries were made in the file, but suggested that this may have occurred because the casino expected Mr. Rood to pay these debts off. This is neither a defense or mitigation, since Tropicana is obliged to report derogatory information on a daily basis.

Respondent argues that there is no evidence that other casinos were adversely affected by its failure here. Even if that is so, it is only because Patron Rood's credit was already suspended elsewhere. In any case, the omission created the risk that others might be swayed by Tropicana's issuance of credit and the lack of any derogatory report. In this business that is an infraction of some moment.

Based on the foregoing, it is my conclusion that Tropicana personnel followed a pattern of withholding derogatory information from CCLV about Patron Rood in violation of N.J.A.C. 19:45-1.27(j). It is **ORDERED** that it pay a penalty of $25,000 for these omissions.

SENDING COLLECTION STATEMENTS FROM JUNE 20, 1986 THROUGH MAY 20, 1987

(Count 2, Tropicana, James)

N.J.A.C. 19:45-1.29(b) provides:

> 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 . . .

N.J.A.C. 19:45-1.29(e) provides:

> Statements shall be sent to patrons, by accounting department employees with no incompatible functions, immediately upon initial receipt of a return check or immediately upon receipt of a check returned for a second time if the check was immediately redeposited pursuant to (d) above, and on a quarterly basis thereafter until collection efforts are discontinued . . .

The record supports petitioner's contention that respondent James made collection efforts during this period and that as part of this activity at least eight of ten collection statements sent went to him. Both Ms. Cullen-Keenan and Ms. Mazzeo-Amoriello acknowledged that if collection statements had been sent directly to Patron Rood the file would have reflected it. The file shows only that these statements went to respondent James. Mr. Gallaway's memorandum of July 15, 1986 to Mr. Bolson also makes apparent Mr. James' involvement. Respondents argue that James was merely a middleman or conduit for the transmittal of these collection statements as he and Patron Rood were friends. While the use of their friendship may have been an expedient and inoffensive way of delivering an unwelcome message, collection statements must be sent to patrons by persons in the collection department without incompatible functions. Respondent James was involved in credit issuing decisions and his position clearly forbad collections. It would defeat the aimed at separation of function between collection and credit, to say that non-collection or credit personnel can be conduits, middlemen, facilitators, or in any other way be involved in the collection process. Mr. James did not appear and we know little of the messenger and nothing of his method of delivery. Yet, the character of the activity seems plain in the absence of any evidence that Tropicana took approved steps in the early months after checks began to return.

Based on the foregoing, it is my CONCLUSION that the failure to utilize routine collection measures after Patron Rood's checks began returning, and the use of respondent James to help collect the debt gives rise to a penalty of $10,000 against Tropicana, and of $2,000 against Mr. James.

THE SETTLEMENT

(Count 3, and 6 Tropicana, Gallaway)

N.J.A.C. 19:45-1.25(a) states:

> Except as otherwise provided in this section, no casino licensee, or any person licensed under the Casino Control Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Casino Control Act, shall
>
> . . . (2) Release or discharge any debt which is uncollectible, either in whole or in part, which represents any losses incurred by any player in gaming activity without maintaining a written record of the deposit, check return and collection efforts as required by N.J.A.C. 19:45-1.28 and 19:45-1.29; . . .

N.J.A.C. 19:45-1.29(j) which governs the procedure for treating return checks as uncollectible states:

> After reasonable collection efforts, returned checks may be considered uncollectible for accounting purposes and charged to the casino licensee's allowance for uncollectible patron's checks . . . Any patron's indebtedness, in excess of $1,000, may only be considered uncollectible for accounting purposes and charged to the allowance for uncollectible patron's checks account after the following information has been included in the patron's credit file:
>
> 1. Documentation by two or more of the casino licensee's collection department employees evidencing independent efforts to collect the patron's outstanding check(s) and the reason why such collection efforts were unsuccessful; and/or
>
> 2. A letter from an attorney representing the casino documenting the efforts to collect the patron's outstanding checks and the reasons why such collection efforts were unsuccessful or were not pursued further.

Petitioner maintains that respondents Tropicana and Gallaway did not make reasonable collection efforts before they settled with Rood and wrote off a portion of his obligation as uncollectible. Its first arguments are procedural in nature. By failing to utilize authorized collection methods, i.e., sending collection statements from the collection department, Tropicana forfeited its right to deem any portion of debt as uncollectible, and then write it off. A write off deprives the state of taxes, and may be taken only after approved steps are followed. Additionally, there is neither documentation in the file from two collection department employees or from an attorney representing the casino setting out the collection effort and why it was unsuccessful. Finally, and more to the substantive point, petitioner believes that Patron Rood was capable of paying this debt and that the settlement is simply further proof that Tropicana was protecting its client at the expense of required collection efforts. At the very time that the negotiations resulting in settlement were taking place, Patron Rood was a cash player at the casino.These and other assets could have been pursued and though collection may not have been easy, this is not the test.

Respondents contend that they had every intention of collecting the debt, but that on December 17, 1986, Patron Rood presented a set of circumstances which made settlement a reasonable option. Collection of the full amount, or for that matter of any substantial portion of the debt, might be blocked for years and would be costly. Even if successful, Tropicana would obtain an interest in Florida realty which it did not want. A long-term payment schedule would deprive it of the use of this money for an indefinite period of time, and should Patron Rood die in the interim, Tropicana would likely have to dispute with his estate. The decision which they took secured an otherwise unsecured loan and they quickly received most of their due.

I do not agree with petitioner's contention that the failure to send collection statements properly, bars respondent from entering into a settlement and write off. That would amount to punishing respondents twice for the same regulatory infraction. The decision with respect to the settlement and write off must stand or fall on its own. Neither do I agree with respect to petitioner's second procedural point. The letters from Mr. Bolson to Mr. Brzozowski in January and February 1987 as well as Mr. Bolson's letter to Florida counsel, and the note, escrow agreement and mortgage taken together, document the effort sufficiently to satisfy subparagraph 2 of N.J.A.C. 19:45-1.29(j). Petitioner is left to argue about the quality and scope of

these papers and this is at best nitpicking. The file is fairly clear about what was done and why.

Finally, Mr. Bolson and Mr. Gallaway were credible and their testimony concerning the decision-making process here is adopted. Thus, faced with substantial impediments to collection of the entire debt they agreed to settlement. There is nothing in this record which would indicate that this was in any way tainted, and given the circumstances they appear to have acted within the bounds of reasonable judgment. Petitioner seeks to connect Rood's status as a favored player, with the original credit extension, failure to report to CCLV and use of James to collect, to conclude that Tropicana simply winked at this debt with the hope that it would recover its loss later. The record does not support such an inference. The charges surrounding the settlement decision and write off are dismissed.

REISSUANCE OF CREDIT FROM MAY 29, 1987 THROUGH MAY 13, 1988

(Count 4, 5, Tropicana Gallaway)

Here again with benefit of hindsight, we are asked to say that the decisions made were unsupported by the credit file. N.J.A.C. 19:45-1.27(a). Again, both sides are armed with plausible arguments. Petitioner now adds the recent settlement experience to its previous view of the March through May 1986 period. Respondents note, that they received almost $1,000,000 from Mr. Rood in settlement and though the result was not optimal neither was it a poor outcome. Respondent Gallaway granted credit initially at $50,000 and the credit committee came to a decision that Patron Rood could not gamble more than $100,000 on any weekend. This was for him, a significant limitation. Despite the settlement, Patron Rood remained a man of great wealth. In the year that this restriction was in effect, he lost and paid $1,000,000 to Tropicana. Thus, argue respondents, the policy was reasonably successful. When his checks began to return Patron Rood informed Mr. Bolson that he was now in serious financial difficulty. Federal authorities had sued him on a bank transaction that had gone awry and there was a lien on his assets, which took priority over the Tropicana debt. At this point he could not pay or provide a security interest.

As expressed earlier in this opinion, it is my view that some leeway must be accorded the executives making these decisions. Considering the type of player that

Rood was, the decision to grant him a comparatively small level of credit on May 29, 1987 was not unreasonable. Additionally, there is no indication that Tropicana was aware of Rood's more pressing financial problems until he disclosed them, after checks began to return. Thus, the decision to allow him to lose up to $100,000 on any weekend was within the bounds of business judgment , and in fact the policy was successful for a year. Counts 4 and 5 of the complaint are therefore dismissed.

THE CADILLAC

On June 29, 1988, respondent Tropicana authorized payment of $25,122.81 to a Florida automobile dealer for the purchase of a Cadillac for Patron Rood's birthday. N.J.S.A. 5:12-102m(4) states:

No casino licensee shall offer or provide any complimentary service, gifts, cash or other item of value to any person unless:

> . . . (4) The complimentary consists of noncash gifts, provided that such noncash gifts in excess of $2,000.00 per trip or such greater amount as the commission may establish by regulation provided directly to the patron and his guests by the licensee or indirectly to the patron and his guests on behalf of a licensee by a third party shall be supported by documentation regarding the reason the noncash gift was provided to the patron and his guests, including where applicable, a patron's player rating, to be maintained by the casino licensee.

Petitioner maintains that player rating information was not included in the decision to grant this complementary and thus the gift was not supported. Respondent maintains that the phrase "when applicable" in the section indicates that player rating information must be included when the casino is unfamiliar with a patron. Surely, in this instance, the player was well-known and Tropicana's decision to buy him a birthday gift was warranted by his play. Petitioner carries the burden of showing that this gift was unsupported and based on the history of patron Rood's play and Tropicana's desire even as late as June 29, 1988 to continue its relationship with him, there is no basis for the conclusion that this was a violation. This charge is dismissed.

This recommended decision may be adopted, 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 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(c).

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

1/18/90
DATE

SOLOMON A. METZGER, ALJ

Agency Receipt:

1/19/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 22 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

tp

EXHIBITS

On behalf of petitioner:

P-1 Credit file
P-2 Financial Statement of E. B. Rood
P-3 Tropicana Hotel/Casino Player Trip History
P-4 Collection Manual
P-5 Credit file
P-6 Minutes of Credit Meeting
P-7 Interoffice Memorandum dated 5/29/87 from Leonor A. Mazzeo-Amoriello to Credit Committee
P-8 Interoffice Memorandum dated 7/15/86 from John M. Gallaway to Steve Bolson
P-9 Interoffice Memorandum dated July 25, 1986 from Steve Bolson to Jack Gallaway
P-10 Interoffice Memorandum dated October 16, 1986 from Steve Bolson to John M. Gallaway
P-11 Letter dated October 17, 1988 from Steven R. Bolson to Edward Rood, Sr.
P-12 Letter dated January 9, 1989 from Steven R. Bolson to Edward Rood
P-13 Summons dated February 9, 1989
P-14 Complaint dated February 9, 1989
P-15 Note dated June 28, 1988 from Edward Rood to Jim Perry
P-16 Car Order dated June 28, 1988
P-17 Purchase Requisition dated June 29, 1988
P-18 Invoice
P-19 Check Request dated June 29, 1988
P-20 Copy of check payable to M. Gentry Auto Sales dated June 29, 1988
P-21 Report dated September 30, 1988 of Tropicana Hotel and Casino Complimentary Transactions for Quarter Ending 9/30/89

On behalf of respondent:

R-1 Investigation Report dated December 31, 1987
R-2 Memorandum dated April 26, 1988 from Agent Dudleyna A. Panton to DAG Kevin F. O'Toole

R-3 Interoffice Memorandum dated December 24, 1986 from Leanor A. Mazzeo, Collection Manager to Lester Brzozowski, Vice President/Finance
R-4 Mortgage
R-5 Escrow Agreement dated January 20, 1987
R-6 Note dated January 20, 1987
R-7 Interoffice Memorandum dated July 9, 1986 from John Buyachek to Bob James
R-8 Memo to File dated July 9, 1986
R-9 Interoffice Memorandum dated April 3, 1987 from Leanor A. Mazzeo, Collection Manager to Lester Brzozowski, Vice President of Finance
R-10 Analysis of Legal accounts
R-11 Rood account sheet summaries
R-12 Rood account sheet summaries
R-13 Interoffice Memorandum dated September 18, 1985 from Steve Bolson to Credit Committee
R-14 Letter dated December 11, 1986 from Steven R. Bolson to Henry Stein, Esq.
R-15 Interoffice Memorandum dated January 13, 1987 from Steve Bolson to Lester Brzozowski
R-16 Interoffice Memorandum dated February 5, 1987 from Steve Bolson to Lester Brzozowski
R-17 Letter dated July 5, 1988 from E. B. Rood to Jim Perry
R-18 Interoffice Memorandum dated January 20, 1989 from Steve Bolson to Lester Brzozowski
R-19 Interoffice Memorandum dated June 18, 1987 from Matt Dee to Credit Executives

WITNESSES

For Respondent:

John M. Gallaway
Steven R. Bolson
Lester Brzozowski
Maureen Cullen Keenan
Leanor A. Mazzeo-Amoriello
Joseph O'Neill

For Petitioner:

Agent Dudleyna A. Panton

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 89-346
OAL DOCKET NO. CCC 04659-89
ORDER NO. 90-47-4

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

Complainant,

v. ORDER

ADAMAR OF NEW JERSEY, INC., DAVID LINNETT et al

Respondents.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation of settlement entered into by David Linnett and the Division of Gaming Enforcement having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the record of these proceedings at its public meeting of November 28, 1990,

IT IS on this 11th day of December 1990, ORDERED that the initial decision-settlement as to David Linnett is adopted; and

IT IS FURTHER ORDERED that David Linnett pay a civil penalty of $4,000 for violating the provisions of the Act and regulations as set forth 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 David Linnett is hereby reprimanded for violating the provisions of the Act and regulations as set forth in the settlement; and

IT IS FURTHER ORDERED that David Linnett's casino key employee license (No. 3400-11) and his hotel registration (No. 57653-40) are suspended for thirty days commencing on December 1, 1990.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

PARTIAL INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 4659-89
AGENCY DKT. NO. 89-346

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ADAMAR OF NEW JERSEY, INC.,
T/A TROPWORLD CASINO AND
ENTERTAINMENT RESORT,
DAVID LINNETT, JOSEPH CARSON,
ROBERT BINSTEIN, AND LISA ELIZARDO,
Respondents.

Nancy P. Scharff, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

David Linnett, respondent, pro se

Record Closed: March 28, 1990 Decided: September 27, 1990

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

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on May 8, 1989 charging the respondents with various violations of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and regulations adopted under the Act. The alleged violations set forth in four counts arise from the return of gaming chips to patron Mitri Hiresh on October 21, 1988. This matter was transmitted to the Office of Administrative Law on June 26, 1989, 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 Division of Gaming Enforcement and respondent David Linnett have agreed to a settlement and have prepared a Stipulation of Facts and Settlement setting forth the agreement between the parties. This Stipulation of Facts and Settlement pertaining to respondent David Linnett is attached and fully incorporated herein. All parties to this proceeding have agreed to issuance of a partial initial decision reflecting the settlement.

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 representative's signatures.

2. The settlement fully disposes of all issues in controversy between the settling parties and it is consistent with the law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the settling parties comply with the settlement terms and that the proceedings as to the settling parties be **CONCLUDED.**

This recommended decision may be adopted, 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 27, 1990
DATE

Joseph F Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

9/28/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 2 1990
DATE

Janice LaVecchia
OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

None

WITNESSES

None

Robert Del Tufo
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
CN-047
25 Market Street
Trenton, New Jersey 08625

By: Nancy P. Scharff
Deputy Attorney General
(609) 984-3969

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 89-346

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, vs. ADAMAR OF NEW JERSEY, INC. t/a TROPWORLD CASINO & ENTERTAINMENT RESORT; DAVID LINNETT; JOSEPH CARSON; ROBERT BINSTEIN AND LISA ELIZARDO Respondents.	STIPULATION OF FACTS AND SETTLEMENT PERTAINING TO RESPONDENT DAVID LINNETT

The above-captioned matter having been discussed by and among the parties involved, Robert Del Tufo, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (hereinafter "Division"), by Nancy P. Scharff, Deputy Attorney General; and Respondent David Linnett appearing pro se; and certain factual matters having been agreed

upon, it is hereby consented to and agreed by and among the parties as follows:

1. Complainant, by and through its Division of Gaming Enforcement (hereinafter "Division"), is now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1 et seq., hereinafter "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, Adamar of New Jersey, Inc. t/a TropWorld Casino & Entertainment Resort (hereinafter "TropWorld"), is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at Iowa Avenue and the Boardwalk in the City of Atlantic City, County of Atlantic, and State of New Jersey.

3. TropWorld is now the holder of a casino license issued by the Commission authorizing TropWorld to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was initially issued to TropWorld effective on November 26, 1982, and most recently renewed on November 26, 1989. TropWorld has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

4. TropWorld is the holder of, and operates pursuant to, a Certificate of Operation effective November 26, 1981 at which time TropWorld was the holder of a temporary casino permit. TropWorld has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date since that time including all times referenced herein. Said Certificate of Operation entitles TropWorld to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

5. Respondent David Linnett presently holds casino key employee license #3400-11. Mr. Linnett currently resides at 1515 Jefferson Davis Highway, Apartment 820, Arlington, Virginia 22202.

6. On or about March 20, 1986, Mitri Hiresh, a TropWorld patron and a resident of Florida, was granted a casino credit account in the amount of $350,000 by TropWorld. As of October 20, 1988, Mr. Hiresh had a $1,000,000 credit limit with TropWorld.

7. On or about October 21, 1988 (gaming day October 20, 1988), at approximately 1:00 a.m., Mitri Hiresh arrived at TropWorld. Upon his arrival, Mr. Hiresh requested that a dealer, Joseph Carson, be reassigned to Pit 14, commonly known as the baccarat pit, to deal blackjack to Mr. Hiresh.

8. Prior to commencing his gaming activity at Blackjack Table BJ 85, Mitri Hiresh requested the issuance of a $250,000 counter check on his approved casino credit account. At or about 1:10 a.m. on October 21, 1988 (gaming day October 20, 1988), Mitri Hiresh was issued counter check #1096004 in the amount of $250,000

Following the signing of said counter check, Mr. Hiresh received $250,000 in gaming chips.

9. At or about 1:14 a.m. on October 21, 1988 (gaming day October 20, 1988), Mr. Hiresh began to play blackjack at Table BJ 85. At this time, Respondent David Linnett was the casino shift manager; Anthony Carno was the relief pit boss assigned to Pit 14 and Nancy Foti was the relief floorperson assigned to Table BJ 85 located within Pit 14.

10. From at or about 1:14 a.m. until at or about 1:22 a.m. on October 21, 1988 (gaming day October 20, 1988), Mitri Hiresh played three rounds of blackjack at Table BJ 85.

11. Following the third round of blackjack referenced in paragraph 10 of this Count, supra, Mitri Hiresh requested the issuance of a second $250,000 counter check on his approved casino credit account. At or about 1:23 a.m. on October 21, 1988 (gaming day October 20, 1988), Mitri Hiresh was issued counter check #1096005 in the amount of $250,000. Following the signing of said counter check, Mr. Hiresh received $250,000 in gaming chips from dealer Joseph Carson.

12. From at or about 1:23 a.m. until at or about 1:30 a.m. on October 21, 1988 (gaming day October 20, 1988), Mitri Hiresh played three additional rounds of blackjack at Table BJ 85.

13. On four of the six rounds of blackjack played by Mitri Hiresh, as referenced in paragraphs 10 through 12, supra, Mr Hiresh wagered amounts which exceeded betting limits which had been established by TropWorld for Mr. Hiresh. Said betting limits are

described in a memorandum dated October 20, 1988 from Emil Russell, Director of Casino Games Operations at TropWorld, to all Shift Managers, Assistants and Pit Bosses. A copy of the October 20, 1988 memorandum is attached hereto and incorporated herein as Exhibit "A".

14. At or about 1:30 a.m. on October 21, 1988 (gaming day October 20, 1988), a seventh round of Blackjack commenced at Table BJ 85, at which time Mitri Hiresh played four of the six spots on the blackjack table, wagering $20,000 on each spot.

15. At or before 1:30 a.m., Respondent Robert Binstein, the pit boss responsible for Pit 14 and Respondent Lisa Elizardo, the floorperson responsible for Blackjack Table BJ 85 within Pit 14, returned from relief breaks and replaced Mr. Carno and Ms. Foti, respectively, who had been working within Pit 14, as described in paragraph 9, supra. Mr. Binstein and Ms. Elizardo observed that Mr. Hiresh was wagering in excess of his designated betting limits.

16. At or about 1:31 a.m. on October 21, 1988 (gaming day October 20, 1988), play at Table BJ 85 within Pit 14 was stopped and Mr. Hiresh was apprised by Respondent Binstein and Respondent Linnett that he had been wagering over his betting limits and that he could no longer continue to do so. Mr. Hiresh became upset, threatened not to pay his outstanding counter checks and stated that he wanted his money back.

17. Respondent David Linnett then directed the dealer, Respondent Joseph Carson, to bring Mr. Hiresh's gaming chips into the center of Table BJ 85 in order to stack them and count them.

18. Respondent Joseph Carson complied with Respondent Linnett's instruction and stacked and counted Mr. Hiresh's gaming chips. Mr Hiresh's chips totalled $315,000, which consisted of three stacks of $100,000 and three loose $5,000 gaming chips. It was thereupon determined that Mr. Hiresh had lost $185,000 during the course of his gaming activity from 1:14 a.m. to 1:31 a.m. on October 21, 1988 (gaming day October 20, 1988), as described in paragraphs 9 through 16, supra.

19. Respondent Linnett then directed Respondent Carson to remove two stacks of grey gaming chips (totalling $200,000) from the table inventory of gaming chips for Table BJ 85 and to add them to Mr. Hiresh's gaming chips, thus making a total of $515,000. Respondent Carson was then directed by Respondent Linnett to place five stacks of gaming chips (totalling $500,000) into two racks and to give the two racks of gaming chips totalling $500,000 to Mr. Hiresh. The three loose $5,000 gaming chips were then returned to the table inventory of gaming chips for Table BJ 85 by Respondent Binstein.

20. Respondents Robert Binstein and Lisa Elizardo were present and witnessed the conduct described in paragraphs 17 through 19 supra, and took no action to protest or prevent the return of the $185,000 in gaming chips to Mitri Hiresh.

21. Respondent David Linnett then escorted Mitri Hiresh, along with the two racks of gaming chips totalling $500,000, to the casino cage in order for Mr. Hiresh to engage in a counter check redemption transaction.

22. Upon arrival at the casino cage, at 1:37 a.m. on October 21, 1988 (gaming day October 20, 1988), Mr. Hiresh presented the two racks of gaming chips totalling $500,000 to Casino Cage Shift Supervisor Jon Goodway for the purpose of redeeming his two (2) outstanding counter checks, #1096004 and #1096005, which totalled $500,000. Cage Shift Supervisor Goodway processed the redemption transaction for Mr. Hiresh at which time Mr. Hiresh's full $500,000 outstanding credit debt was recorded as paid and his credit account thereupon reflected a zero outstanding balance.

23. After redeeming his two (2) outstanding counter checks, as described in paragraphs 21 to 22, supra, Mr. Hiresh returned to the gaming tables at TropWorld where he engaged in further gaming activity until 4:00 a.m. on October 21, 1988 (gaming day October 20, 1988).

24. In a written statement dated October 25, 1988, Respondent David Linnett indicated that he directed Respondent Carson to return the money which Mr. Hiresh had lost so that Mr. Hiresh could "start afresh" with the betting limits designated in the October 20, 1988 memorandum. A copy of Respondent David Linnett's statement is attached hereto and incorporated herein as Exhibit B.

25. Pursuant to the approved job compendium at TropWorld, a Casino Shift Manager is responsible for the efficient operation of all table games on a particular shift. The approved job compendium at TropWorld charges casino shift managers with knowledge of the Casino Control Act and its attendant regulations as well as TropWorld's internal controls, policies and procedures.

26. N.J.S.A. 5:12-99, which requires a casino licensee to submit to the Commission a description of its internal procedures and administrative and accounting controls, provides in pertinent part, as follows:

> a. Each casino licensee shall submit to the commission a description of its system of internal procedures and administrative and accounting controls...Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the casino, including, but not limited to:
>
> * * *
>
> (16) Procedures and rules governing the conduct of particular games and the responsibility of casino personnel in respect thereto;
>
> * * *

27. N.J.S.A. 5:12-100(e) provides, in pertinent part, as follows:

> All gaming shall be conducted according to rules promulgated by the Commission. All wagers and pay-offs of winning wagers at table games shall be made according to rules promulgated by the Commission, which shall establish such minimum wagers and other limitations as may be necessary to assure the vitality of casino operations and fair odds to and maximum participation by casino patrons....

28. N.J.A.C. 19:47-2.3(c), which sets forth certain requirements for wagers in the game of Blackjack, provides, in pertinent part, as follows:

> Except as otherwise provided in these regulations, no wager shall be made, increased or withdrawn after the first card of the respective round has been dealt.

29. The conduct of Respondent David Linnett in returning $185,000 in gaming chips to Mitri Hiresh for losses incurred by Mr. Hiresh while engaging in gaming activity between 1:14 a.m. and 1:31 a.m. on October 21, 1988 (gaming day October 20, 1988), as described in paragraphs 10 through 19, supra, permitted Mr. Hiresh to withdraw his losing wagers after the respective blackjack rounds had been dealt during said period of time, in violation of N.J.S.A. 5:12-99a(16); N.J.S.A. 5:12-100(e); and N.J.A.C. 19:47-2.3(c).

30. The conduct of Respondent David Linnett in providing to Mr. Hiresh $185,000 in gaming chips representing Mr. Hiresh's losing wagers, constitutes a violation of N.J.S.A. 5:12-100(e), as this $185,000 represented a pay-off or reimbursement to Mr. Hiresh on his losing wagers and gave Mr. Hiresh an unfair advantage over other casino patrons who did not receive pay-offs or reimbursements of their losing wagers.

31. N.J.S.A. 5:12-101, which sets forth certain requirements for the extension of credit by casino licensees, states in pertinent part, as follows:

> a. Except as otherwise provided in this section, no casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, shall:
>
> (1) Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activity as a player;
>
> (2) Release or discharge any debt, either in whole or in part, or make any loan which represents any losses incurred by any player in

gaming activity, without maintaining a written record thereof in accordance with the rules of the commission.

***

c. ...the drawer of the check may redeem the check by exchanging cash or chips in an amount equal to the amount for which the check is drawn; or he may redeem the check in part by exchanging cash or chips and another check which meets the requirements of subsection b. of this section for the difference between the original check and the cash or chips tendered; or he may issue one check which meets the requirements of subsection b. of this section in an amount sufficient to redeem two or more checks drawn to the order of the casino licensee.

32. The conduct of Respondent David Linnett in returning $185,000 in gaming chips to Mitri Hiresh for losses incurred by Mr. Hiresh while engaging in gaming activity between 1:14 a.m. and 1:31 a.m. on October 21, 1988 (gaming day October 20, 1988), as described in paragraphs 10 through 18, supra, constitutes a violation of N.J.S.A. 5:12-101a(1) as this $185,000 represented a loan or an advance of something of value or which represents value which enabled Mr. Hiresh to take part in gaming activity as a player.

33. The conduct of Respondent David Linnett, in providing $185,000 in gaming chips to Mr. Hiresh from the table inventory of gaming chips for Table BJ 85 for losses Mr. Hiresh incurred as a result of engaging in gaming activity between 1:14 a.m. and 1:31 a.m. on October 21, 1988 (gaming day October 20, 1988), as described in paragraphs 10 through 18, supra, constitutes a violation of N.J.S.A. 5:12-101a(2) as this $185,000 represented a

loan for losses incurred by Mr. Hiresh in gaming activity and/or an unlawful release or discharge of a portion of Mr. Hiresh's $500,000 casino credit debt owing to TropWorld prior to a determination that said credit debt was uncollectible and without maintaining a written record in accordance with the rules of the Commission.

34. The conduct of Respondent David Linnett, in providing $185,000 in gaming chips to Mr. Hiresh from the table inventory of gaming chips for Table BJ 85 for losses incurred by Mr. Hiresh while engaging in gaming activity between 1:14 a.m. and 1:31 a.m. on October 21, 1988 (gaming day October 20, 1988), as described in paragraphs 10 through 18, supra, constitutes a violation of N.J.S.A. 5:12-101c, as Mr. Hiresh utilized the $185,000 in gaming chips from the table inventory of Blackjack Table BJ 85 to redeem his counter checks and thus actually reimbursed TropWorld only $315,000, an amount less than the amount of the counter checks redeemed.

35. N.J.A.C. 19:45-1.20(a), which sets forth certain requirements for the control and accountability of gaming chips maintained within the table inventory of each gaming table, states:

> (a) Whenever a gaming table in a casino is opened 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.

36. At or about 1:31 a.m. on October 21, 1988 (gaming day October 20, 1988), gaming chips totalling $185,000 maintained within the table inventory of gaming chips for Table BJ 85 were removed from said table inventory and given to patron Mitri Hiresh, as described in paragraphs 17 through 19, supra, without patron Mitri Hiresh exchanging an equal value of cash or gaming chips or presenting a properly executed issuance copy of a Counter Check.

37. The conduct of Respondent David Linnett, in removing $185,000 in gaming chips from the table inventory of Table BJ 85 and providing said gaming chips to Mr. Hiresh for losses he incurred while engaging in gaming activity between 1:14 a.m. and 1:31 a.m. on October 21, 1988 (gaming day October 20, 1988), as described in paragraphs 10 through 18, supra, constitutes a violation of N.J.A.C. 19:45-1.20(a).

38. On January 27, 1989, a sworn investigative interview of Respondent Robert Binstein was conducted. A copy of the transcript of this January 27, 1989 interview is attached hereto and incorporated herein as Exhibit C.

39. On February 2, 1989, a sworn investigative interview of Respondent Lisa Elizardo was conducted. A copy of the transcript

of this February 2, 1989 interview is attached hereto and incorporated herein as Exhibit D.

40. On February 9, 1989, a sworn investigative interview of Respondent Joseph Carson was conducted. A copy of the transcript of the February 9, 1989 interview is attached hereto and incorporated herein as Exhibit E.

41. On February 10, 1989, a sworn investigative interview of Respondent David Linnett was conducted. A copy of the transcript of the February 10, 1989 interview is attached hereto and incorporated herein as Exhibit F.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. The facts stated herein are true and did in fact occur;

2. Respondent David Linnett admits to violations of N.J.S.A. 5:12-99(a)(16); N.J.S.A. 5:12-100(e); N.J.A.C. 19:47-2.3(c); N.J.S.A. 5:12-101a(1) and (2); N.J.S.A. 5:12-101c; and N.J.A.C. 19:45-1.20(a);

3. In consideration of the foregoing violations by Respondent David Linnett, the parties agree that the following penalties be imposed upon Respondent Linnett:

a. A civil penalty in the amount of $4,000;

b. A formal letter of reprimand; and

c. Respondent Linnett shall be suspended for a total of thirty (30) working days.

4. The parties agree that such penalties are just and equitable in accordance with the criteria set forth at N.J.S.A.

5:12-130 and shall be in full and final settlement of the allegations pertaining to Respondent David Linnett set forth in the Division's complaint; and

5. This Stipulation shall be subject to the approval and acceptance of the Commission.

The undersigned consent to the form and entry of this Stipulation of Facts and Settlement.

Dated: March 7, 1990 By: Nancy P. Scharff
Nancy P. Scharff
Deputy Attorney General
State of New Jersey

Dated: 2-20-90 By: D. a. L-tt.
David Linnett

120189/10LL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-87
LICENSE NO. 057392-21
OAL DOCKET NO. CCC 07630-89
ORDER NO. 90-41-9

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF TONI ARABIA

ORDER

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 17, 1990,

IT IS on this 14th day of November 1990, ORDERED that the initial decision is modified as follows to find that the applicant has failed to establish the good character, honesty and integrity required for casino employee licensrue pursuant to N.J.S.A. 5:12-90b;

ORDER NO. 90-41-9

IT IS FURTHER ORDERED that the renewal application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7630-89
AGENCY DKT. NO. 90-EA-87

TONI ARABIA,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Michael H. Schreiber, Esq., for the petitioner (Schreiber & Friedman, attorneys)

Nancy P. Scharff, Deputy Attorney General, for the respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: June 26, 1990 Decided: July 19, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Toni Arabia, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (craps dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, she lacked the requisite good character, honesty and integrity,

pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so she could be employed as a craps dealer at Trump's Castle Hotel and Casino. By letter to the Commission, dated August 3, 1989, the Division objected to the petitioner's application for licensure as a craps dealer, asserting that the petitioner had committed the offenses of distribution of a controlled dangerous substance (marijuana) in violation of N.J.S.A. 2C:35-5 and conspiracy to distribute a controlled dangerous substance in violation of N.J.S.A. 2C:5-2, which are disqualifying offenses under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on September 11, 1989, that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated September 20, 1989, which was received by the Commission on September 21, 1989, the petitioner requested a hearing. On September 22, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on October 5, 1989, 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 in the matter was held before me on February 8, 1990. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:35-5, distribution of a controlled dangerous substance (marijuana), and N.J.S.A. 2C:5-2, conspiracy to distribute a controlled dangerous substance.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on June 26, 1990, at the Municipal Courtroom, Egg Harbor Township Municipal Building, Bargaintown, New Jersey, after which the record closed.

FACTUAL DISCUSSION

On April 19, 1988, an informant introduced New Jersey State Police Undercover Detective William F. Carey as a prospective buyer of marijuana to the petitioner, Toni Arabia. This occurred in Maynard's Bar in Margate. Detective Carey purchased Ms. Arabia a drink, and they had a brief conversation. During this conversation, Ms. Arabia pointed to two individuals, James Palladinetti and Michelle Perlstein, and indicated that they were her source for marijuana. As Mr. Palladinetti and Ms. Perlstein were leaving the bar, Ms. Arabia introduced them to Detective Carey as "her main people for weed." Mr. Palladinetti told the detective that he could contact him through Ms. Arabia "for anything." After the couple departed, Ms. Arabia told Detective Carey to call her if he wanted anything and if Jim and Michelle were "dry," she would "check around" for him. Ms. Arabia gave Detective Carey her telephone number and Detective Carey departed.

On April 21, 1988, Detective Carey telephoned the petitioner regarding the purchase of one ounce of marijuana. Ms. Arabia indicated that she would call Jim and Michelle and check on the price. Later, Ms. Arabia telephoned Detective Carey and told him that the price for one ounce of marijuana was $140 and the price for one ounce of Thai bud was $180. Detective Carey asked to purchase one ounce of marijuana, and Ms. Arabia indicated she would call back with the details. Ms. Arabia later telephoned Detective Carey and told him to meet her and Michelle at the Ventnor Shopping Plaza.

Michelle picked up Ms. Arabia at her house and drove to the shopping center. While in the car, Michelle gave Ms. Arabia what later tested to be just under one ounce (27.8 grams) of marijuana (R-2). At the shopping center, Ms. Arabia exited Michelle's vehicle and entered Detective Carey's vehicle. She gave the detective the marijuana, and he gave her $140. Detective Carey asked Ms. Arabia if she knew where he could obtain some cocaine; however, Ms. Arabia knew nothing about

cocaine and advised Detective Carey to talk to Michelle. Ms. Arabia motioned for Michelle to join them, which she did.

Detective Carey asked Michelle if she knew where he could obtain some cocaine. Michelle indicated that they had just returned from Florida and had some connections for cocaine, but that she would have to talk to Jim. As no one had a pen, Michelle told Detective Carey to call Ms. Arabia in order to obtain her telephone number to call and discuss the purchase of cocaine.

On April 29, 1988, Detective Carey telephoned Ms. Arabia and obtained Michelle's telephone number. Detective Carey contacted Jim and then proceeded to Jim's apartment. When Detective Carey arrived, he saw approximately one pound of marijuana on a table which Jim was "breaking down" and packaging into one ounce containers. Detective Carey purchased one ounce of marijuana which later tested positive as being just over one ounce (30.3 grams) of marijuana (R-3).

On June 2, 1988, the petitioner was telephoned by Detective Carey who identified himself as a police officer and requested Ms. Arabia to turn herself in for processing. Ms. Arabia then proceeded to the State Police office in Atlantic City, was arrested and processed. At that time, she indicated that she had learned that Detective Carey was a police officer and she was maintaining a "low profile." She also indicated that she would cooperate with the police. She was then charged with the sale of one ounce of marijuana in violation of N.J.S.A. 2C:35-5, and was then released on her own recognizance (J-1).

The petitioner is now 23 years old and lives with her parents. April 19, 1988, was her twenty-first birthday. As such, she was celebrating both her birthday and her attainment of the legal drinking age. As such, the petitioner was slightly intoxicated. When introduced to Detective Carey, he asked her if she knew where he could buy some "pot." She did not sell marijuana, but she knew Jim and Michelle did. Ms. Arabia knew it was wrong to sell drugs, but she thought she was doing everybody a favor by introducing them to each other. The petitioner did not receive any compensation for her part in the transaction. While employed in the casino industry, the petitioner attended parties held by casino employees where marijuana was used, and she did experiment with it at that time, however, she has not used or possessed marijuana since her arrest in 1988.

The petitioner graduated from Holy Spirit High School in 1985. While in school, she worked at a movie theater and then at Sir Speedy Printers. Upon graduation from high school, she obtained her casino employee license. She was hired as a craps dealer at Trump's Castle where she worked for four years. She was a good employee and was only disciplined once for violating the attendance call-in procedures.

Since her arrest, she successfully completed a Pretrial Intervention Program, and the charges were dismissed. She also completed a three-month manicuring course at a vocational school and has received a license as a manicurist. She now works in a family-run hair styling salon. She plans to return to school and study cosmetology.

The petitioner submitted four letters of recommendation in her behalf. The first, written by a retired police officer, Sergeant Edward Jones, provides that "Toni is a very honest and caring person. She is also dependable and hard working" (P-1).

The second written by Anthony R. Catrambone provides:

> . . . I have known the Arabia family for approximately twenty years. I have found Mr. and Mrs. Arabia to be hard working, law abiding and responsible people and the apple doesn't fall too far from the tree when it comes to their daughter Toni.
>
> I have watched Toni grow up over the years and develop into a fine young woman. I have always felt that she was a responsible person and never had to worry when she and my daughter went out. I also have felt comfortable whenever Toni babysat for my granddaughter and I am a very protective family man. [P-2]

The third letter, written by her father, describes Toni as a "responsible and efficient employee." He also states that she has disassociated herself from her former drug connections. Her father describes this incident as an isolated incident [P-3]

Finally, John Sisinni, the petitioner's former supervisor at Trump's Castle, wrote that the petitioner always received excellent evaluations as a craps dealer. She was always honest and trustworthy and was an excellent employee. [P-5]

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitoner and the applicant for a

casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects. I am also persuaded that her misconduct was in part, due to immaturity.

FINDINGS OF FACT

1. On April 19, 1988, an informant introduced New Jersey State Police Undercover Detective William F. Carey as a prospective buyer of marijuana to the petitioner, Toni Arabia.

2. Ms. Arabia identified two individuals, James Palladinetti and Michelle Perlstein, as her source for marijuana.

3. As Mr. Palladinetti and Ms. Perlstein were leaving the bar, Ms. Arabia introduced them to Detective Carey as "her main people for weed." Mr. Palladinetti told the detective that he could contact him through Ms. Arabia "for anything." After the couple departed, Ms. Arabia told Detective Carey to call her if he wanted anything and if Jim and Michelle were "dry," she would "check around" for him. Ms. Arabia gave Detective Carey her telephone number and Detective Carey departed.

4. On April 21, 1988, Detective Carey telephoned the petitioner regarding the purchase of one ounce of marijuana. Later, Ms. Arabia telephoned Detective Carey and told him that the price for one ounce of marijuana was $140 and the price for one ounce of Thai bud was $180.

5. Detective Carey requested to purchase one ounce of marijuana, and Ms. Arabia indicated she would call back with the details.

6. Ms. Arabia later telephoned Detective Carey and told him to meet her and Michelle at the Ventnor Shopping Plaza.

7. Michelle picked up Ms. Arabia at her house and drove to the shopping center. While in the car, Michelle gave Ms. Arabia what later tested to be just under one ounce (27.8 grams) of marijuana.

8. At the shopping center, Ms. Arabia gave the detective the marijuana, and he gave her $140.

9. Detective Carey asked Ms. Arabia if she knew where he could obtain some cocaine; however, Ms. Arabia knew nothing about cocaine and advised Detective Carey to talk to Michelle. Ms. Arabia motioned for Michelle to join them, which she did.

10. In Ms. Arabia's presence, Detective Carey asked Michelle if she knew where he could obtain some cocaine. Michelle indicated that they had just returned from Florida and had some connections for cocaine, but that she would have to talk to Jim. As no one had a pen, Michelle told Detective Carey to call Ms. Arabia in order to obtain her telephone number to call and discuss the purchase of cocaine.

11. On April 29, 1988, Detective Carey telephoned Ms. Arabia and obtained Michelle's telephone number.

12. Detective Carey contacted Jim and then proceeded to Jim's apartment. Detective Carey purchased one ounce of marijuana which later tested positive and as being just over one ounce (30.3 grams) of marijuana.

13. On June 2, 1988, the petitioner was arrested, was charged with the sale of one ounce of marijuana in violation of N.J.S.A. 2C:35-5, and was then released on her own recognizance.

14. The petitioner is now 23 years old and lives with her parents.

15. April 19, 1988, was her twenty-first birthday. As such, she was celebrating both her birthday and her attainment of the legal drinking age. As such, the petitioner was slightly intoxicated.

16. Ms. Arabia knew it was wrong to sell drugs, but she thought she was doing everybody a favor by introducing them to each other. The petitioner did not receive any compensation for her part in the transaction.

17. The petitioner has not used or possessed marijuana since her arrest in 1988.

18. The petitioner graduated from Holy Spirit High School in 1985. While in school, she worked at a movie theater and then at Sir Speedy Printers.

19. Upon graduation from high school, she obtained her casino employee license. She was hired as a craps dealer at Trump's Castle where she worked for four years. She was a good employee and was only disciplined once for violating the attendance call-in procedures.

20. Since her arrest, she successfully completed a Pretrial Intervention Program, and the charges were dismissed.

21. She completed a three-month manicuring course at a vocational school and has received a license as a manicurist. She now works in a family-run hair styling salon. She plans to return to school and study cosmetology.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, 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:
>
> a. Failure of the application to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c.95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . .

N.J.S. 2C:5-2 (conspiracy to commit an offense which is listed in this subsection);

•

. . . .

N.J.S. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance or a controlled dangerous substance analog which constitutes a crime of the second or third degree);

. . . .

g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity,

the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

...

e. 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.

...

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:35-5, distribution of a controlled dangerous substance (marijuana) and a violation of N.J.S.A. 2C:5-2, conspiracy to distribute a controlled dangerous substance, which constitutes a violation of section 86c(1), and that, accordingly, she is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends, by means of section 86g, that the petitioner's sale of marijuana to an undercover detective and her participation in helping arrange for another sale of marijuana constitutes a violation of N.J.S.A. 2C:35-5 and N.J.S.A. 2C:5-2, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:35-5, Manufacturing, distributing or dispensing, provides in pertinent part:

> a. Except as authorized by P.L. 1970, c.226 (C. 24:21-1 et seq), it shall be unlawful for any person knowingly or purposely:
>
> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or
>
> . . . .
>
> b. Any person who violates subsection a. with respect to:
>
> . . . .
>
> (11) Marijuana in a quantity of one ounce or more but less than five pounds including any adulterants and dilutants, or hashish in a quantity of five grams or more but less than one pound including any adulterants and dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to $15,000.00 may be imposed;
>
> (12) Marijuana in a quantity of less than one ounce including any adulterants and dilutants, or hashish in a quantity of less than five grams including any adulterants and dilutants, is guilty of a crime of the fourth degree;

In State v. Weissman, 73 N.J. Super 274 (App. Div. 1962), the court held that the passing of marijuana and money between the defendant and the person who allegedly received marijuana from the defendant for purpose of selling marijuana to third persons as defendant's agent constituted "sale" within prohibitions of Uniform Narcotic Drug Law. Further, in State v. Metcalf, 168 N.J. Super. 375, 381 (App. Div. 1979), the court stated:

> Although defendant in the instant case did not receive any money from the drug transaction, a pecuniary interest is not a prerequisite for one to be considered an aider or abettor. The proofs at trial showed that defendant was involved in two successive attempts to obtain drugs for the undercover agent. The judge's determination that defendant was an agent for both the buyer and seller of the pills is amply supported by the evidence.

The court therefore affirmed the defendant's conviction of unlawfully distributing a controlled dangerous substance.

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The Division established, and the petitioner admitted during her testimony, that she knowingly delivered marijuana to Detective Carey on behalf of Michelle Perlstein. This marijuana weighed just under one ounce. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:35-5. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-5b(12), the offense constitutes a crime of the fourth degree.[1]

Accordingly, I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the offense committed by the petitioner on April 21, 1988 is a disqualifying offense under sections 86c(1) and 86g.

N.J.S.A. 2C:5-2 Conspiracy, provides in pertinent part:

> a. Definition of conspiracy. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:
>
> (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
>
> (2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.
>
> ....
>
> d. Overt act. No person may be convicted of conspiracy to commit a crime other than a crime of the first or second degree or distribution or possession with intent to distribute a controlled dangerous substance as defined under the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c.226 (C. 24:21-1 et seq.), unless an overt act in pursuance of such conspiracy is proved to have been done by him or by a person with whom he conspired.

The Division established that when asked about how to purchase cocaine, the petitioner summoned Michelle Perlstein to the car and thus facilitated a prospective sale of cocaine. Thereafter, knowing the parties were attempting to consummate a a sale of cocaine, she provided the telephone number of Michelle Perlstein to the detective thus enabling the detective to contact Ms. Perlstein. As a result of providing this telephone number, the detective was able to purchase just over one

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1 One ounce equals 28.350 grams.

ounce of marijuana. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:5-2. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-5b(3), the conspiracy to distribute cocaine is at a minimum a crime of the third degree. I further **CONCLUDE** that the petitioner's actions on April 21, 1988, aided and abetted the sale of just over one ounce of marijuana. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:2-6 and N.J.S.A. 2C:35-5a. I further **CONCLUDE** that pursuant to N.J.S.A. 2C:35-5b(11), the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g.

(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 by affirmatively demonstrating 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 or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the applicant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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 person who have or have had the applicant under their supervision.

In regard to the first criterion, Ms. Arabia is a casino licensee and was employed as a craps dealer. As such, she does have direct responsibilities for actual gaming activities and does come in contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:35-5, distribution of a controlled dangerous substance, over a one week period while employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The petitioner brought together parties so they could consummate a drug transaction. She thereafter acted as the intermediary to deliver the drugs and transfer the money. Afterwards, she again acted as an intermediary to enable the parties to discuss the prospective sale of cocaine. While this later action did not result in the sale of cocaine, it did result in the sale of marijuana. Such illicit drug activities are extremely serious and cannot be condoned in the casino industry.

Fourth, the petitioner's misconduct occurred in April 1988, when it ceased.

Fifth, the petitioner was 21 years old at the time of the offense. I believe immaturity was a factor in this case.

Sixth, the petitioner's misconduct was isolated in nature. She has not committed any other violations of the criminal laws.

Seventh, the petitioner thought she was just doing a favor for all the parties involved. She received no pecuniary or other benefit from the transaction. The day of the initial contact was her birthday and she was slightly intoxicated.

Eighth, the petitioner successfully completed her Pretrial Intervention Program. She has a good work record, and has basically led a law abiding life. She was very candid, and she is remorseful. She has not used marijuana since her arrest She attended vocational school and has been licensed as a manicurist. She intends to return to school to study cosmetology. While the petitioner has begun her journey towards rehabilitation, the offense is only two years old, and the charges were

dismissed only two months ago (P-4). Insufficient time has passed to enable the petitioner to establish her rehabilitation by clear and convincing evidence.

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

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Arabia was required to establish, by clear and convincing evidence, her good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that she is otherwise a person of good character, honesty and integrity. The misconduct did not directly involve her licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for her misconduct, regained control over her behavior, performed admirably within the personal care and beauty industry during the past two years, and has become a respected member of her community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this State. An examination of the whole person clearly and convincingly establishes that Ms. Arabia is now a person of good character, honesty and integrity, and would be entirely suitable for licensure in this State if it were not for her disqualifying conduct. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her **good** character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Toni Arabia for the renewal of a casino employee license **be DENIED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 19, 1990
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

7-20-90
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 24 1990
DATE

James L. Vecchia
OFFICE OF ADMINISTRATIVE LAW

caj/e

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DOCUMENTS IN EVIDENCE

Joint Exhibits:

J-1 Complaint, dated June 2, 1988

For the Petitioner:

P-1 Letter of Sgt. Edward Jones, dated June 21, 1990

P-2 Letter of Anthony Catrambone

P-3 Letter of Todd Arabia, dated June 20, 1990

P-4 Order of Dismissal, dated April 24, 1990

P-5 Letter of John Sisinni

For the Respondent:

R-1 Petitioner's renewal application, dated May 11, 1988

R-2 State Police Laboratory Report, 86308H, dated April 28, 1988

R-3 State Police Laboratory Report, 86638H, dated May 10, 1988

R-4 Not in evidence

WITNESSES

For the Petitioner:

Toni Arabia, the petitioner

For the Respondent:

Detective William F. Carey, New Jersey State Police

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-CSI-23
APPLICATION NO. 3065-70
VENDOR I.D. NO. 29887
OAL DOCKET NO. CCC 5313-90
ORDER NO. 90-37-12

APPLICATION OF BAKELY SIGNS, INC., t/a ELECTRO SIGNS FOR A CASINO SERVICE INDUSTRY LICENSE AND QUALIFICATION OF CHARLES C. BAKELY, SR. : ORDER

A hearing having been held before the Office of Administrative Law on the application of Bakely Signs, Inc.; and Charles C. Bakely, Sr., having failed to request a hearing on his qualifications; 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 September 19, 1990,

IT IS on this 20th day of September 1990, ORDERED that the initial decision is adopted; 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

IT IS FURTHER ORDERED that Charles C. Bakely, Sr. is prohibited from doing any business directly or indirectly with or supplying any goods or services to casino licensees; and

IT IS FURTHER ORDERED that Charles C. Bakely, Sr. is disqualified pursuant to N.J.S.A. 5:12-86(c) and 92(c) and (d) and is restricted from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to the provision of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC-05313-90
AGENCY DKT. NO. 90-CSI-23

BAKELY SIGNS, INC.
Petitioner,

vs.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

RUSSELL E. PAUL, ESQUIRE, attorney for petitioner

FREDERICK J. McDONOUGH, Deputy Attorney General, for respondent
(Robert J. DelTufo, Attorney General of New Jersey, attorney)

RECORD CLOSED: AUGUST 23, 1990 DECIDED: AUGUST 31, 1990

BEFORE **JOSEPH E. KANE, ALJ:**

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) objecting to the petitioner continuing to hold a casino service industry license pursuant to N.J.S.A. 5:12-92 of the Casino Control Act (hereinafter referred to as the Act). The Division alleges that Charles C. Bakely (hereinafter referred to as Charles) has such an interest in the company so as to disqualify it from licensure and that the company is not qualified to hold a casino service industry license due to the company's employment of Charles knowing that he was otherwise disqualified due to the commission of a Section 86(c)1 disqualifying offense.

PROCEDURAL HISTORY

The Division filed its letter of objection with the Commission on May 10, 1990. Petitioner requested a hearing on June 25, 1990 and on June 29, 1990 the matter was transmitted to the Office of Administrative Law (OAL) to be heard on an expedited basis pursuant to N.J.A.C. 1:1-9.4. A prehearing conference was conducted on July 25, 1990 before Joseph E. Kane, ALJ followed by a hearing which was held on July 31, 1990. The record was closed on August 23, 1990.

ISSUES

The issues to be determined by this tribunal are as follows:

A. Whether petitioner has sufficiently separated itself from Charles C. Bakely, Sr. in order that petitioner may prove its qualifications under the provisions of the Casino Control Act in order to permit the petitioner to do business with the casino industry.

B. Whether petitioner should be disqualified from licensure because petitioner employed the services of Charles C. Bakely, Sr. with full knowledge of his criminal activities.

FINDINGS OF FACT

Based upon testimony presented and documents proffered at the hearing, the following constitutes **FINDINGS OF FACT** in this matter.

Petitioner, Bakely Signs, Inc. is owned and operated by Regina M. Bakely (hereinafter referred to as Gina). Gina is a 28 year old single woman, with one child, who graduated from Brandywine College. Shortly thereafter, Gina was married and began to work for her father-in-law's company Dolequest Medical Supplies. She separated from her husband in or about November 1986 and later purchased a home in 1987.

Gina made it known to her parents and friends that she wanted to continue with a career and re-enter the job market.

Gina's father, Charles, recommended that she contact Mr. John Roberts who was the manager of Northern Outdoor Advertising, (Northern) a company with offices in Atlantic City, New Jersey

and headquarters located in North Carolina. Northern was engaged in the business of erecting and selling billboard advertising. Northern had acquired a much smaller company based only in Atlantic City known as Electro Signs (hereinafter referred to as Electro). Electro unlike Northern, dealt in smaller signs, neon signs and displays. The former owners of Electro, pursuant to a buy-out agreement relieving Electro and Mr. Roberts, who was more concerned with the running and possible sale of Northern, needed someone to take over the day-to-day operations of Electro.

Charles was the owner and operator of Andrew Construction Company (hereinafter referred to as Andrew) which specialized in heavy duty erection construction, such as iron work and precast concrete. Andrew had erected billboards for Northern and through this association, Charles introduced his daughter to John Roberts. After several meetings, it was clear to Gina that Mr. Roberts was looking for someone he could groom to take over Electro. After much consideration and a brief trial work period, Gina agreed to accept the challenge and began employment in December of 1988.

Gina quickly became a jack of all trades managing Electro and assisting in the daily business affairs of Northern since Mr. Roberts was often absent from the office. Gina quickly learned that Northern wanted to divest itself of its Atlantic City subsidiary and if that event occurred, Northern would most likely divest itself of Electro or merely allow it to go out of business. Realizing that Electro was the unwanted stepchild of Northern, Gina became concerned that all the effort she had put

into Electro to build the company would be wasted and she would be out of a job. Gina had spent countless overtime hours learning and operating the business of Electro. As set forth above, Gina was a jack of all trades since not only was she selling the product, preparing bid specifications and negotiating with businesses and casinos, but she often donned a hardhat to climb up scaffolding, sides of buildings and to enter upon casino hotel roofs in order to estimate the job. By the time Northern was considering divesting itself of or closing down Electro, Electro was Regina (Gina) Bakely.

Contemporaneous with the discussions to sell Northern and to divest Electro from Northern, the Casino Control Commission notified Electro that due to the amount of business Electro was conducting with the casinos, it would have to qualify for a service industry license. At this time, the Bakely family Gina, Regina Bakely, her mother, (hereinafter referred to as Regina) and Charles were considering a way for Regina to purchase Electro. Charles was concerned for the financial health of his company, Andrew, due to the slump in the construction business. He wanted his wife and daughter to be financially secure in the event Andrew went bankrupt. Gina testified that Regina wanted to be involved in a business of her own apart from her husband since her family was now grown and away from the home. The decision to buy Electro from Northern was made and negotiations for the transfer began in the summer of 1989.

Gina, in the summer of 1989, was not sure whose name should be listed as qualifiers for Electro with the Casino

Control Commission because of the pending transfer. She listed herself as Vice President, Charles as General Manager, Pat Waters as the Bookkeeper and Joe Tattie as Foreman. The Division now draws into question Charles' involvement in the company since he was listed as General Manager and as more fully set forth below, he assisted with some of the jobs performed by Electro.

Gina had sales experience with the Hyatt Corporation and later with her father-in-law's company, Dolequest Medical Supply. In this latter position, which she describes as first assistant to her father-in-law who was the head of the company, she sold products, re-designed and opened stores and assisted with marketing. Her sales, marketing and organization skills could thus be carried over into the Electro business, however, she did not anticipate the adverse reaction she would receive from the male employees nor was she ready to climb buildings and scaffolding in order to bid jobs. Charles removed trash and debris from Electro's shop, organizing the facilities and the workers. He also taught his daughter how to climb onto roofs and scaffolding, to measure and to estimate and anticipate the heavy machinery needed for outdoor neon signs. He never at any time negotiated directly or indirectly with the casinos. Gina testified that he did not negotiate, nor did he know how to, since heavy equipment and not contracting was his speciality. All dealings with the casinos were conducted by Gina and Pat Waters. Charles had no involvement with the books of Electro or with the application to qualify as a service industry licensee. His involvement with Electro was to teach his daughter skills she

needed to manage men, estimate jobs and determine when and what type of heavy equipment or cranes should be utilized.

The purchase of Electro from Northern was in the form of a buyout costing $200,000.00 financed with no money down to be paid monthly over a four year period. Regina owns 100% of the stock in Bakely Signs t/a Electro. Neither Gina or Charles own any stock in the corporation. The purchase price was guaranteed by Charles and Regina placing as collateral land which they owned jointly in Westville, New Jersey. This real estate stood as security for receivables and has been discharged as of the date of the hearing according to Gina. A post hearing submission (Exhibits P-1 thru P-3 would indicate that Charles and Regina are in the process of converting this land into the name of Regina only.

After the legal metamorphosis changed Electro into Bakely Signs t/a Electro, Charles continued to provide support to his daughter by continuing to assist her with directing of the men, teaching her how to measure large buildings and assisting with specifications when heavy equipment such as cranes were needed. Gradually Gina assumed greater all around responsibility for Electro. She wanted to have complete control and supervision over all aspects of the company and to do so she needed to acquaint herself with aspects of the company's operation which only her father could teach her. She wanted direct involvement with every aspect of the business even if it meant climbing scaffolding in a 28 story building to supervise her men. As Gina learned this aspect of the business, her father's role began to

decrease. Charles was listed by Gina as one of the qualifiers in the position of "General Manager". This was a title that he was given
by John Roberts when Charles performed work for Northern. His functions were more in the nature of a subcontractor, however, the title of General Manager with Northern as well as Electro remained with him. Gina emphasized that only she or Pat Waters, the bookkeeper were the only two individuals in the company that ever had dealings with the casino industry when Electro was owned by Northern and when Electro was owned by Bakely Signs.

On April 11, 1990 Charles was convicted of a violation of 29 U.S.C. 186(a)(2), the Taft-Hartley Act. Gina, her brothers, or her grandparents were not aware of the pending criminal charges. Suspecting for a period of time that something was bothering her father, Gina confronted him on or about May 1, 1990 at which time he revealed the circumstances surrounding the criminal charges. Within one week, Charles was no longer a salaried employee of Electro and was no longer involved directly or indirectly with the running of the business.

Since commencing work with Electro, Gina has through her own perseverance and talents together with the assistance of her father evolved into a knowledgeable, assertive businesswoman who has a first hand knowledge of all aspects of Electro. Gina throughout the hearing expressed appreciation for the assistance her father has given her in the past, nevertheless, she realizes that she can no longer have any dealings with him concerning Electro no matter how trivial. Charles also understands that in

order for Bakely signs to continue operations with the casinos he cannot have so much as a conversation with his daughter or even answer a question for her concerning Electro's business. Gina has now evolved to the point where she no longer needs her father's assistance.

DISCUSSION AND CONCLUSION

The two issues presented by this matter are whether Charles was so involved with Electro so as to disqualify Bakely Signs from licensure and whether Bakely has now sufficiently distanced itself from Charles in order to qualify for continued licensure.

Bakely Signs seeks to retain its non-gaming casino service industry license. Pursuant to Section 92 of the Act such entities must be licensed in accordance with the rules of the Casino Control Commission. Under N.J.A.C. 19:43-1.3(c) each applicant for license must establish by clear and convincing evidence that it possesses the good character, honesty and integrity required for licensure. Those whose qualifications must be established as a prerequisite to licensure of the enterprise pursuant to Section 92(c) of the Act (qualifiers) are identified in N.J.A.C. 19:43-1.4(a)(2). These include the enterprise and each owner holding a beneficial interest in excess of five percent as well as each director of the enterprise and each officer significantly involved in the conduct of business with a casino licensee. Pursuant to Section 92(d) of the Act a non-gaming casino service industry license may be denied to any applicant who is disqualified in accordance with the criteria set

forth in Section 86 of the Act.

DOES BAKELY SIGNS POSSESS THE REQUISITE GOOD CHARACTER, HONESTY AND INTEGRITY REQUIRED FOR LICENSURE.

Electro had business dealings with the casino industry prior to it evolving into Bakely Signs t/a Electro. The requirement for licensure appears to have been initiated around April of 1989 with the sale of Electro occurring in the summer of that year. During this time period and continuing until around the first of May, Charles' role in the enterprise appeared to be that of a subcontractor and consultant to his daughter. As time passed, his involvement decreased. Within one week of learning of her father's difficulties with the criminal justice system, Gina no longer employed or consulted with her father.

Considering that Gina had no knowledge of her father's criminal activity and further considering that she immediately took steps to distance him from the company after learning of his involvement, I **FIND** that petitioner has met its burden to demonstrate by clear and convincing evidence that it possesses the requisite good character, honesty and integrity required for licensure under Section 92 of the Act.

HAS BAKELY SIGNS SUFFICIENTLY DISTANCED ITSELF FROM CHARLES C. BAKELY IN ORDER TO QUALIFY FOR CONTINUING LICENSURE.

The factual testimony presented during the course of the hearing stood unrefuted by both parties. Thus, the issue is whether those facts as presented demonstrate that Charles Bakely will have no contact whatsoever direct or indirect with Bakely

Signs. Gina's and Charles' affirmation that they would have no contact with each other regarding Bakely Signs including not so much as a question answered over dinner, is at first difficult to believe and to accept due to the family relationship. Nevertheless, having had an opportunity to observe the demeanor of Gina, I **FIND** her testimony to be credible and her vow not to involve her father in the affairs of Bakely Signs to be believable. Gina was candid in her admiration and love for her father, however, she was equally committed to the viability and success of Bakely Signs and if ceasing all business contact with her father was necessary, this was a business decision she seemed willing and able to abide by. This, together with evidence of Charles' ever decreasing role in the company leads inevitably to the conclusion that Charles has and will continue to remain apart from any of the business decisions or operations of Bakely Signs t/a Electro Signs. I **FIND** accordingly and **HEREBY HOLD** that petitioner does possess the requisite good character, honesty and integrity required of a casino service industry licensee pursuant to Section 92 of the Act.

This recommended decision may be adopted, 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.

OAL DKT. NO. CCC-05313-90

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

Sept. 4, 1990
DATE

M Alan.
JOSEPH E. KANE, ALJ

Receipt Acknowledged:

9/10/90
DATE

Kim Woody
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 12 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

pas

EXHIBITS

FOR PETITIONER:

P-1 Mortgage, undated;
P-2 Mortgage Note, undated;
P-3 Deed, undated;

FOR RESPONDENT:

R-1 Business Entite Disclosure Form - 3;
R-2 Affidavit of Regina M. Bakely;
R-3 Affidavit of Charles C. Bakely;
R-4 Affidavit of Charles C. Bakely, Sr.;
R-5 Personal History Disclosure Form-4 of Charles C. Bakely;

JOINT EXHIBITS:

J-1 Promissory Note, undated;
J-2 Mortage Note dated October 3, 1989;
J-3 Mortgage dated october 3, 1989;

WITNESSES

FOR PETITIONER:

REGINA M. BAKELY
CHARLES C. BAKELY, SR.
REGINA M. BAKELY

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-379
REGISTRATION NO. 089941-40
OAL DOCKET NO. CCC 03185-90
ORDER NO. 90-50-10

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

Complainant,

ORDER

v.

JOHN BALL,

Respondent.

A hearing 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 December 19, 1990,

IT IS on this 28th day of December 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the respondent is found disqualified from holding a casino hotel employee registration substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

ORDER NO. 90-50-10

IT IS FURTHER ORDERED that the disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit him to retain his casino hotel employee registration and he remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91; and

IT IT FURTHER ORDERED that John Ball is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC-3185-90

AGENCY DKT. NO. 90-379

CASINO CONTROL COMMISSION

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

Petitioner,

vs.

JOHN E. BALL,

Respondent.

R. LANE STEBBINS, Deputy Attorney General, for petitioner
(Robert J. DelTufo, Attorney General of New Jersey, attorney)

JOHN E. BALL, respondent, pro se

Record Closed: October 2, 1990 Decided: November 8, 1990

BEFORE **LILLARD E. LAW, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The New Jersey Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) alleging that respondent John E. Ball committed criminal acts which disqualify him from holding a casino hotel employee registration. The Division alleges that respondent's conviction for Aggravated Assault, N.J.S.A. 2C:12-1b(1), is a disqualifying offense for his continued registration in the casino industry pursuant to Section 86c(1) of the Casino Control Act (the Act).

This matter was transmitted to the Office of Administrative Law (OAL) on April 25, 1990 for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 54:14F-1 et seq. A prehearing conference was conducted on July 31, 1990 followed by a plenary hearing which was held on October 2, 1990 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record was considered closed on October 2, 1990.

ISSUES

The issues to be resolved by this administrative tribunal are as follows:

A. Whether respondent was convicted of a crime listed as

a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 2C:12-1b(1), Aggravated Assault?

B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act?

C. If respondent fails to demonstrate rehabilitation under section 91d, whether he should be permitted to otherwise retain his casino employee registration through the extraordinary relief of waiver as permitted by section 91e of the Act?

FINDINGS OF FACT

Based upon the testimony and documents proffered at the hearing, and having given fair weight thereto, I **FIND** the following **FACTS** in this matter:

Respondent is presently 28 years of age, married and living with his wife and her minor child. Respondent is the father of eight (8) children by four (4) different mothers for which he is responsible for child support payments in the amount of $170 per week. He is presently employed by the Sands Hotel and Casino (Sands) as a banquet supervisor under his casino hotel employee registration where his gross pay is approximately $300 per week. He also maintains a second job with the Amoco Service Station on Absecon Boulevard, Route 30, Atlantic City, between the hours of 11:00 p.m. until 7:00 a.m. five (5) days per week where his gross pay is approximately $250 per week. His wife is gainfully employed at the Trump Castle Hotel and Casino as a security person where she averages approximately $250 per week.

On June 1, 1986, respondent took a kitchen knife from his mother's home and proceeded to drive his pick-up truck to the Belle Plain State Forest, Dennis Township, Cape May County. Respondent expected to see his ex-paramour, Patricia Holland, there on a picnic outing with her friends. Ms. Holland, who is the mother of three of respondent's children, had recently broken off a six year relationship with respondent. When respondent left his mother's house with the kitchen knife, he was sober and had not consumed any alcoholic beverage.

Respondent asserted he went to the Belle Plain State Forest looking for Ms. Holland because he believed she would be with her boyfriend. When he located Ms. Holland at the park he ran up to her and commenced stabbing her with the kitchen knife. She attempted to run from him, but he caught up with her and continued to stab her. Respondent then ran from the scene, dropping the knife on a dirt path, and escaped in his pick-up truck. Respondent was subsequently arrested by a Park Ranger who had followed respondent's vehicle to Woodbine, New Jersey. Thereafter, respondent made a full and complete statement admitting to seeking out and stabbing Ms. Holland. In the meantime, Ms. Holland was transported to Burdette Tomlin Hospital, Cape May Courthouse, New Jersey, where she was admitted for emergency surgery for the stab wounds inflicted upon her by respondent. (P-2) Ms. Holland subsequently recovered.

On August 6, 1986, the Cape May County Grand Jury indicted respondent, Indictment 86-08-0204-I, for Aggravated Assault, N.J.S.A. 2C:12-1b(1), and Possession of a Weapon for Unlawful

Purpose, N.J.S.A. 2C:39-4(d). (P-4) On September 8, 1986, respondent retracted his plea of not guilty to both counts of the indictment. On September 29, 1986, respondent was sentenced to seven (7) years in the New Jersey State Prison on Count One of the Indictment and three (3) years on Count two, to run concurrent with Count One. The Court also imposed a penalty against respondent in the amount of $60 to the Violent Crimes Compensation Board (VCCB). (P-5).

Respondent served 19 months of his sentence after which he was paroled on April 5, 1988. His parole is to expire on October 24, 1991. The conditions for his release under parole include, among other things; regular attendance at Alcoholics Anonymous (AA) for more than one year (he does not now attend A.A. meetings), a urine specimen once per month screening for alcohol and controlled dangerous substance (CDS) and, steady and regular employment.

Respondent reported one prior arrest which occurred on June 20, 1984. He was charged with simple assault, however, the matter was dismissed (P-1).

Respondent contends that his former assaultive behavior was attributable to alcohol and drugs. Since his release from prison he is no longer violent nor does he engage in fighting or other aggressive behavior. His activities while in prison included, among other things, participation with A.A., weight lifting, arts and crafts and Bible study.

DISCUSSION AND CONCLUSION

N.J.S.A. 5:12-1b(8) establishes that licensure and registration under the Act are revocable priviliges which are "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 the respondent's criminal misconduct constitutes a disqualifying offense under section 86c(1), and therefore, he cannot continue to hold a license or registration.

I. Disqualification Under N.J.S.A. 5:12-86c(1)

Section 86c(1) of the Act mandates that a person who has been convicted of any one or more of the enumerated offenses therein under Title 2C of the New Jersey Code of Criminal Justice shall be disqualified from holding a casino employee license or a casino hotel employee registration. It is uncontested that respondent was convicted of the crime of Aggravated Assault, in the third degree, N.J.S.A. 2C:12-1b. It is further uncontested that respondent was sentenced to serve seven (7) years for this offense in a New Jersey State Prison.

I **CONCLUDE**, therefore, that the Division has met its burden of proof, by a preponderance of the credible evidence, that respondent committed a disqualifying offense pursuant to section 86c(1) of the Act.

Accordingly, I **FIND** and **CONCLUDE** that such disqualifying

offense warrants the revocation of respondent's casino hotel employee registration.

II. Rehabilitation Pursuant to N.J.S.A. 5:12-91d

A current registrant faced with the existence of one or more section 86 disqualifications in a disciplinary proceeding has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his rehabilitation, pursuant to section 91d of the Act. This statute sets forth eight specific criteria to be evaluated when a determination for rehabilitation is to be made. Section 91d of the Act provides as follows:

> (1) The nature and duties of the registrant's position;
> (2) The nature and seriousness of the offense or conduct;
> (3) The circumstances under which the offense or conduct occurred;
> (4) The date of the offense or conduct;
> (5) The age of the registrant when the offense or conduct was committed;
> (6) Whether the offense or conduct was an isolated or repeated incident;
> (7) Any social conditions which may have contributed to the offense or conduct;
> (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.

(1) Respondent is currently employed by the Sands as a

banquet supervisor under his casino hotel employee registration. Respondent comes into contact with casino patrons in the performance of his duties as banquet supervisor. He wishes to retain his registration and continue in this type of employment.

(2) and (3) The offense committed by respondent was serious and could have resulted in the death of his victim. Respondent knowingly removed a kitchen utility knife from his mother's home and purposely drove his pick-up truck to a location he knew his former paramour (and mother of three of his children) could be found, with the intent to inflict serious bodily harm to her. Respondent, unprovoked, repeatedly stabbed his victim, Ms. Holland, and then fled the scene. He admitted he was not under the influence of alcohol when he left his mother's house with the knife.

(4) and (5) The offense of Aggravated Assault was committed on June 1, 1986 when respondent was 24 years of age.

(6) Respondent had one prior arrest for simple assault, which was dismissed. The offense of Aggravated Assault committed on June 1, 1986 is the only conviction on respondent's record.

(7) There were no social conditions which contributed to respondent's conduct.

(8) Respondent was sentenced to serve seven (7) years in prison for the offense of Aggravated Assault with a three (3) year concurrent sentence for the offense of possession of a weapon for unlawful purpose. While in prison, respondent participated in its A.A. program and Bible study, among other things. Respondent was granted parole after serving only 19 months of his 84 month sentence. He remains under parole

supervison for another year, which will terminate on October 24, 1991.

Having carefully considered all of the factors in N.J.S.A. 5:12-91d, and having given fair weight thereto, I am not persuaded that respondent has met his statutory burden of establishing his rehabilitation. He has not, nor will he complete his Court ordered probation period until October 24, 1991. In addition, by his own admission, respondent has not been attending A.A. meetings where he avers that it was alcohol and CDS which caused his assaultive behavior. It would appear he needs the support of A.A. and/or N.A. to continue his recovery from his addictive behavior.

Respondent failed to offer any evidence from his present employer, the Sands; as to his job performance, his relationship with other employees and patrons, his understanding of the Commission regulations which affect him, among other factors. Nor did respondent offer any evidence of his rehabilitation as viewed by members of his immediate community, the clergy and/or business associates.

I **CONCLUDE**, therefore, that respondent has failed to establish his rehabiliation, by clear and convincing evidence (N.J.S.A. 5:12-86a), as permitted under Section 91d of the Act.

III. Waiver of Disqualification as provided by N.J.S.A. 5:12-91e

Pursuant to section 91e of the Act, the Commission may:

> ... waive any disqualification criterion for a casino hotel employee consistent with the public policy of this act and upon a finding that the interest of justice so require.

The facts in this matter demonstrate that respondent is currently holding down two full-time jobs, one in the casino industry and one outside the casino industry, in order to provide for his wife, who is also gainfully employed in the casino industry, and her minor child. Respondent is also under a court order to provide $170 per month in child support for eight children he has fathered.

Although respondent is a convicted felon, the Sands has shown its faith in him and employed him as a banquet supervisor. Respondent does not have an extensive arrest or criminal record. Other than the one conviction, for a very serious offense, repondent has had only one arrest where the charge of simple assault was dismissed. Since his parole from prison on April 5, 1988, respondent has had no involvement with law enforcement officials nor the Criminal Justice system, other than his parole officer.

I **FIND** and **CONCLUDE** that respondent is making every effort to project a positive image of himself. I also **FIND** and **CONCLUDE** that he is remorseful for the pain and suffering he has inflicted upon Ms. Holland, with whom he has established a friendly relationship. I further **FIND** and **CONCLUDE** that in the interest of justice, respondent should be permitted to retain his registration.

ORDER

I **CONCLUDE**, therefore, that consistent with the public policy of the Act and my finding that the interest of justice requires that respondent retain his casino hotel employee registration, it is accordingly **ORDERED** that the disqualification criteria be **WAIVED** and that respondent's casino hotel employee registration be permitted to be **RETAINED**. (See: Dunston vs. Dept. of Law, 240 N.J. Super. 53 (App. Div. 1990)).

I hereby **FILE** my initial decision with the **CASINO CONTROL COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is authorized to make a final decision in this matter. If the Casino Control Commission does not adopt, modify or reject this decision within 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.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHAIR OF THE CASINO CONTROL COMMISSION, 3131 Princeton Pike, Building 5, CN 208, Trenton, New Jersey 08625**, marked "Attention: Exceptions." A copy of any

exceptions must be sent to the judge and to the other parties.

8 November 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

11-14-90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 19 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

pas

EXHIBITS

FOR PETITIONER:

P-1 Application for registration;
P-2 New Jersey State Police Investigation Report;
P-3 Three page statement of John Ball
P-4 Indictment #86-08-0204-I;
P-5 Judgment of conviction;

FOR RESPONDENT:

R-1 Letter dated August 16, 1990 from Paul Gardner, Parole Officer;

WITNESSES

FOR PETITIONER:

JOHN E. BALL

FOR RESPONDENT:

JOHN E. BALL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-402
REGISTRATION NO. 53275-40
OAL DOCKET NO. CCC 7103-88
ORDER NO. 89-50-10

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

Complainant,

v. ORDER

RICHARD A. BARBER,

Respondent.

This matter having been transmitted to the Office of Administrative Law for a hearing; and an initial decision having been filed with the Casino Control Commission; and the Commission having considered the entire record of the proceedings at its public meeting of December 20, 1989,

IT IS on this 4th day of December 1990, ORDERED that this matter be remanded to the Office of Administrative Law for the reasons stated on the record. The matter is remanded with the following instructions:

(1) The Division of Gaming Enforcement (DGE) is directed to resubmit all available evidence bearing on the issue of whether the respondent possessed cocaine at Harrah's Marina on October 9, 1984, including the testimony of the investigators who allegedly witnessed the event.

(2) The DGE is directed to amend its complaint to incorporate any and all bases for

disqualification of the respondent and to submit as much evidence as possible during the administrative hearing concerning his entire criminal record so that the Commission has a full record on which to make a reasoned determination.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7103-88

AGENCY DKT. NO. 84-402

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

v.

RICHARD A. BARBER,
Respondent.

Norma Stancil, Deputy Attorney General, for petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Richard A. Barber, pro se

Record Closed: September 27, 1989 Decided: November 10, 1989

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint against the respondent with the Casino Control Commission (Commission) on November 28, 1984, seeking the revocation of the respondent's casino hotel employee registration. The ground for the relief sought was the allegation that the respondent was charged with possession of cocaine in Harrah's Marina Hotel and Casino on October 9, 1984.

The respondent requested a hearing. He also requested that the hearing be delayed pending disposition of the criminal charge against him in the Atlantic County Court, Criminal Division. After the criminal charge was resolved, the Commission transmitted the matter to the Office of Administrative Law (OAL) on September 28, 1988, to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A plenary hearing convened on August 1, 1989. The record was held open for 30 days to permit the respondent to obtain letters which he asserted would indicate that he was rehabilitated. He obtained one letter but apparently filed it only with the Attorney General. Upon learning that the letter was filed with the Attorney General. The record was held open until September 27, 1989, to permit additional investigation by the deputy attorney general.

The issues set forth in the prehearing conference order were as follows:

A. Whether respondent's continued registration is inimical to the policy of the casino control act pursuant to N.J.S.A. 5:12-86 because he is alleged to have committed a violation of N.J.S.A. 24:21-20(a)1, possession of cocaine, despite the fact that the act was not prosecuted in the criminal courts of this state as permitted by N.J.S.A. 5:12-86g.

B. Whether respondent may demonstrate rehabilitation pursuant to Donna Davis, 8 N.J.A.R. 301.

The Casino Control Act (Act), N.J.S.A. 5:12-1 et seq., strictly regulates the employment of casino and casino hotel workers. Casino employees are required to be licensed, N.J.S.A. 5:12-90, casino hotel employees are required to be registered. N.J.S.A. 5:12-91. Both may be disqualified if convicted of certain enumerated crimes, N.J.S.A. 5:12-86c(1), or of any other offense if the offense was such as to render the applicant, licensee or registrant's employment inimical to the policy of the Act and to casino operations. N.J.S.A. 5:12-86c(2). Disqualification may occur even if the applicant, licensee or registrant has not been prosecuted for the offense. N.J.S.A. 5:12-86g. Applicants, licensees and registrants (excepting only key employees) may overcome a disqualification by offering clear and convincing evidence that they are rehabilitated. N.J.S.A. 5:12-80a, 89, 90h and 91d. Rehabilitation is also a factor to be considered in the inimicality analysis. Donna Davis, 8 N.J.A.R. 301.

This respondent is a registrant and was employed on October 9, 1984, at Harrah's Marina and Casino Hotel. His alleged offense was not prosecuted. The alleged offense is not an enumerated criminal offense, therefore, the Division alleges that his continued registration is inimical.

Detective Sergeant Wilshire of the New Jersey State Police testified that he was assigned to investigate an incident in Harrah's Marina Hotel and Casino on October 9, 1984. At that time, he was a member of the Casino Investigation Bureau of the New Jersey State Police and the Division of Gaming Enforcement. He met the respondent and two members of the Atlantic County Major Crimes Unit in a men's locker room on the second floor of the hotel on the day mentioned. The respondent had been questioned there about his knowledge of a homicide. During the interrogation, a packet of cocaine fell out of the respondent's pant leg. Wilshire was called in to make the arrest. A State chemist reported to Wilshire that the packet contained a tenth of a gram of cocaine.

Wilshire did not observe the cocaine fall from respondent's pant leg. It was found during the interrogation by the officers of the major crime unit before Wilshire arrived. The respondent admitted at the hearing only that it was found on the floor next to his feet. Respondent seemed to imply, by word and gesture, that the cocaine was a "plant" in order to induce him to testify about a certain homicide.

The respondent was indicted for possession of cocaine but the indictment was dismissed as part of a plea bargain in which the respondent pled guilty to hindering the apprehension of a person charged with homicide by obtaining transportation for him.

The Division also introduced the substantial criminal history record of the respondent. This evidence is useful in determining whether or not an individual is rehabilitated. Rehabilitation statutes require a consideration of whether the relevant offense is an isolated or repeated incident. N.J.S.A. 5:12-91d(6) and 90h(6). The respondent quibbled at length over his criminal history record. He claimed that as a result of lengthy and substantial drug abuse he was unable to recall many of the

incidents. He also claimed that he had only six adult convictions. I take him at his word on both claims.

The respondent said that he could not have been in any trouble recently because he has been incarcerated. He also claimed that he had resolved his drug problems through attendance at NA (Narcotics Anonymous).

It appeared from the respondent's testimony that he was released from a half way house on July 11, 1989, after being continually incarcerated since August 17, 1987 or 1986, he does not remember which. This gives him a possible alibi for a burglary with which he was charged on August 28, 1987. This charge too was dismissed as part of a plea bargain. In any case, respondent has an extensive criminal background.

On November 3, 1988, the respondent was admitted to a half-way house operated by the Volunteers of America. While there, he met all of the contractual obligations imposed by the VOA on prisoners who wish to pursue work release programs. He obtained employment, he paid for his room and board, he kept a savings account and he paid his Violent Crimes Compensation Board (VCCB) penalty. He also attended NA and a 16 week substance abuse program. He was monitored weekly and remained alcohol and chemical free during his stay at the Volunteers of America. Moreover, his case manager says that respondent "conducted himself in a mature and positive manner at all times" and was elected by his peers as a spokesman to the Facility Director on their behalf.

I am also satisfied from the respondent's testimony that he still attends NA meetings. I urge him to continue; it works.

Respondent's parole will terminate in February of 1991.

Respondent hopes to enroll in a cooking course. He is presently employed as a public area attendant in a non casino related hotel.

The respondent was unable or unwilling to produce any letters from persons who supervised his employment although given an opportunity to do so.

The testimony of Sergeant Wilshire concerning the respondent's possession of cocaine was hearsay. It was also documented in police reports which are also hearsay. In addition, the respondent confirmed that the cocaine was found on the floor and that he was charged with its possession. He said that the cocaine was a plant.

The Act permits the introduction of hearsay evidence. Its use, however, is well regulated. It must be relevant and, in order to make a factual finding based upon it, it must be "the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs." N.J.S.A. 5:12-107a(6). The legislature specifically enacted this standard for the admission of evidence in hearings conducted under the Act so that the residuum rule which governs the admissibility of evidence in all other New Jersey Administrative hearings would not apply. N.J.A.C. 1:1-15.5. The cases confirm that the residuum rule is inapplicable in cases under the Act. DGE v. Merlino, 8 N.J.A.R. 126, 161. Merlino also deals with the legal sufficiency of certain kinds of evidence. For instance, it abjures newspaper articles. Ibid. p. 164. It describes the report of a law enforcement agency as "insufficient by itself to support a find (sic)" "Ibid. p. 164. Merlino also identifies some of the factors to be considered in applying the responsible person/serious affairs rule. Is the hearsay corroborated by other evidence? Is it contradicted by other direct or reliable hearsay? Does the respondent dispute the hearsay in his testimony? Ibid. p. 165 In this case, there is a hearsay police report that the respondent possessed cocaine. He disputes this in his oral testimony; and says it was a plant. At least this statement may be treated as an admission that the cocaine actually existed. In addition, the bona fides of this disputed possession is so dubious as to amount to an affirmation of the truth of the proposition.

Respondent claims that he suffers from memory loss as a result of serious and prolonged drug abuse. This memory loss includes the factual basis for all of a long series of criminal convictions although he admits there were "only six adult convictions." In addition, the antipathy he displayed, both by word and in his demeanor, towards the deputy attorney general as she probed his memory concerning his criminal record and this event in particular, made all of his testimony suspect. He wheeled around in the witness box assuming attitudes of defiance, showing her his back and making extraordinary faces intended to communicate disgust and distain for her questions.

There comes a time in a trial when a person's attitude, demeanor, body language and words are so hostile and negative that they tend to confirm the truth of the statement which they mean to refute. Respondent's courtroom behavior and long history of drug abuse lead me inescapably to the conclusion that it is more probable than not that on October 9, 1984, the respondent possessed cocaine in a casino facility.

I **FIND** that the respondent possessed cocaine in a casino facility during his employment on October 9, 1984.

This is an offense proscribed by N.J.S.A. 2C:35-10, although at the time the offense occurred the statute violated was N.J.S.A. 24:21-20(a)1.

In order for inimicality to be found in a particular case, the state must show by a preponderance of the evidence that the respondent's continued registration would be inimical to the policy of the Act and to casino operations. This registrant is an unrehabilitated drug offender. His attendance at NA is a first step and an excellent one,but mere attendance at NA is not equivalent to rehabilitation. The respondent is still on parole and will be until February 1991. His demeanor indicates that he has difficulty with authority. He constantly argued with the deputy attorney general over his criminal record and its relevancy as to whether he should be registered. The respondent has not had sufficient time in the community to demonstrate that he is rehabilitated. He was released from the VOA only in July of this year. His stay there, it must be mentioned, showed that the respondent has the potential to become a contributing member of society, but he is not yet there. He has a long way to go.

Inimicality has been defined as "encompass(ing) 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. In Re Resorts Casino Application, 10 N.J.A.R. 244, 254.

This offense was possession of cocaine in a casino hotel. The respondent's long history of drug abuse makes him an unmistakeable risk to the industry until such time as he can prove his rehabilitation from drugs and the criminality associated with them.

I **CONCLUDE** that the respondent's continued registration would be inimical to the policy of the Act and to casino operations.

I **ORDER** that the respondent's casino hotel registration be **REVOKED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

November 10, 1989
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

11/16/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 16 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

WITNESS LIST

For the Petitioner

Daryl Wilshire
Richard Barber
Robert Hughes

For the Respondent:

Richard Barber

EXHIBIT LIST

For the Petitioner:

P-1 Summons 224704 dated 4-23-84
P-2 Summons 224705 dated 4-23-84
P-3 Investigation Report dated 5-31-84
P-4 Arrest Report dated 5-31-84
P-5 Summons dated 5-31-84
P-6 Investigation Report dated 10-9-84
P-7 Arrest Report dated 10-9-84
P-8 Summons SN 13038
P-9 Indictment No. 85-07-1107-C
P-10 Order for Presentence Investigation
P-11 Indictment No. 85-08-1239
P-12 Judgment of Conviction
P-13 Investigation Report dated 8-18-86
P-14 Investigation Report dated 8-18-86
P-15 Arrest Report dated 8-18-86
P-16 Complaint Warrant 556718
P-17 Accusation No. 86-09-1769-C

P-18 Judgment of Conviction
P-19 Investigation Report dated 8-8-87
P-20 Arrest Report dated 8-8-87
P-21 Complaint 619973 dated 8-8-87
P-22 Indictment No. 87-08-1559-C
P-23 Criminal Justice System Review
P-24 Order of Commitment dated 11-5-87
P-25 Report dated 8-28-87
P-26 Arrest Report dated 8-28-87
P-27 Complaint Warrant 678739
P-28 Complaint Warrant W-678740
P-29 Indictment No. 87-09-1852-B
P-30 Order of Commitment
P-31 Personal Disclosure Form
P-32 State Bureau of Investigation

For the Respondent:

R-1 VOA Identification
R-2 Letter from VOA dated August 23, 1989

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-169
LICENSE NO. 014645-21
OAL DOCKET NO. CCC 09352-89
ORDER NO. 90-37-10

RENEWAL APPLICATION OF KENNETH A. BARTS — ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of September 19, 1990,

IT IS on this 27th day of September 1990, ORDERED that the initial decision is modified to find that:

(1) the unprosecuted conduct which the administrative law judge (ALJ) found to constitute the offense of theft by deception in violation of N.J.S.A. 2C:20-4 is disqualifying pursuant to N.J.S.A. 5:12-86(c)(1) and -86(g);

(2) the ALJ should have recommended that the respondent's renewal application "be denied" rather than that his casino employee license "be revoked" because this is a case involving a license application;

(3) the ALJ erred in concluding that the respondent failed to demonstrate his rehabilitation;

(4) the respondent has affirmatively demonstrated his rehabilitation for the following reasons: (1) the offense took place approximately 6 years ago; (2) the respondent is employed in the non-gaming related position of cocktail server; (3) the respondent has had a good work record in the casino industry; and, (4) 11 individuals testified to his diligence and character; and

(5) the respondent has established his good character, honesty and integrity pursuant to N.J.S.A. 5:12-90(b)(2), given the significant overlap between the evidence necessary to establish rehabilitation and the evidence necessary to establish good character, honesty and integrity. In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 79-EA-113 at 22 (Commission decision April 22, 1980).

IT IS FURTHER ORDERED that the renewal application of Kenneth A. Barts is granted.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC-09352-89

AGENCY DKT. NO. 90-EA-169

KENNETH A. BARTS,
Petitioner,

vs.

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

Respondent.

KENNETH A. BARTS, petitioner, pro se

NORMA STANCIL, Deputy Attorney General for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record closed: JULY 3, 1990 Decided: JULY 17, 1990

OAL DKT. NO. CCC-09352-89

BEFORE **JOSEPH E. KANE**, ALJ:

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) objecting to the renewal of the casino employee license #014645-21 issued to petitioner. The Division alleges, among other things, that petitioner committed acts which constitutes a statutory disqualifier for licensure and that petitioner lacks the requisite good character, honesty and integrity for licensure.

PROCEDURAL HISTORY

The Division filed its letter of objection with the Commission on November 3, 1989. Petitioner requested a hearing on November 22, 1989 and on November 29, 1989 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on March 26, 1990 by JEFF S. MASIN, ALJ followed by a hearing which was held on June 18, 1990 . The record was closed on July 3, 1990 .

ISSUES

A. Did Mr. Barts engage in conduct which, had it been prosecuted, would have constituted the crime of theft

by deception, N.J.S.A. 2C:20-4, a crime of the third degree?

B. If Mr. Barts did engage in such conduct, does the Casino Control Act require his automatic disqualification from licensure pursuant to N.J.S.A. 5:12-86c(1)?

C. If Mr. Barts would be automatically disqualified, does the evidence establish that he has rehabilitated himself from the prior misconduct so as to be permitted to be relicensed pursuant to N.J.S.A. 5:12-90(h)?

D. Does Mr. Barts have the required good character, honesty and integrity necessary for licensure, pursuant to N.J.S.A. 5:12-89b(2)?

UNCONTESTED FACTS

Based upon testimony and documents proffered at the hearing on June 18, 1990, the following facts are neither contested nor in dispute. Therefore, these uncontested facts are hereby adopted as **FINDINGS OF FACT** in this matter.

Petitioner is a 30 year old single male with two children who are currently not living with him. Petitioner was issued a casino license on July 23, 1980. The license sought to be renewed by petitioner is for the position of slot mechanic (electro); blackjack dealer; roulette dealer. He is currently

employed by the Trump Plaza Hotel and Casino in the position of a cocktail server. Petitioner's employment with the casino industry began in 1980 when he was employed by Resorts International Hotel and Casino as a bar porter. Thereafter, he was employed by Caesers Hotel and Casino and Showboat Hotel and Casino as a bar porter from the date Showboat opened until he moved to Trump Plaza. For a brief period of time in 1989 Mr. Barts was employed at TropWorld as a change mover, a position that he said he left after learning that he could not be employed by two casinos simultaneously. Since beginning at Resorts his employment in the casino industry, as well as working various positions on the boardwalk, were full time jobs. He recalled earning $5.00 an hour at Resorts; "$5.00 and some change" at TropWorld; minimum wage while working on the boardwalk; $5.00 an hour as a bar porter at Trump Plaza; and the position which he currently holds pays "$4.00 and some cents per hour" plus tips. Although holding a casino license with the endorsements of slot mechanic, blackjack and roulette dealer Mr. Barts has never worked or sought employment in these positions.

For the past fifteen years Mr. Barts has from time to time lived in his parents' apartment and has always utilized their residence located at 2305 Sheldon Avenue, Apartment 12, Atlantic City, New Jersey as an address where he could receive mail. Documents R-1 thru 17 introduced into evidence by the State contain the Sheldon Avenue address. Between May 21, 1984 and July 30, 1984 Mr. Barts collected unemployment benefits in the amount of $809.00 as more fully set forth in R-15 . At the time he was collecting unemployment, he was employed at the Tropicana Hotel/Casino and freely admitted that he knew that it

was wrong to collect unemployment insurance while working and stated: "at that time I knew the money would come in handy". He offered as a justification his inability to make ends meet since he had just moved into an apartment on Georgia Avenue, was attempting to pay rent, feed himself and give some support to the one child that he had at that time. Since incurring the debt, he has failed to make any voluntary repayments with the exception of $33.50 in December of 1989 and $25.00 in February of 1990. Involuntary payments were made by way of payment from his New Jersey State Income Tax refund check in November of 1987 and September of 1988. As of the date of the hearing, the amount of the debt was $740.08. He stated that the reason he began voluntary payments in December of 1989 was because of the action being taken against his license by the Division of Gaming Enforcement. His lack of payment since February of 1990 he attributes to his inability to make ends meet based upon his greatly reduced work schedule of one to three days per week. He works only when called by his employer to substitute for other employees who are marked out sick or on vacation.

On December 8, 1986 Mr. Barts was arrested by the Egg Harbor Township Police and charged with shoplifting a bicyle worth $59.99 from a local department store. At the time of this arrest he was found to be carrying marijuana and was charged with possessing a controlled dangerous substance. On February 8, 1988 he pled guilty to shoplifting, N.J.S.A. 2C:20-11 and was ordered to pay a fine of $150.00, $25.00 court costs and $30.00 to the Violent Crimes Compensation Board. At that time he also pled guilty to possessing a controlled dangerous substance, marijuana, under 50 grams and was ordered to pay a penalty of

$150.00, $25.00 court costs and $30.00 to the Violent Crimes Compensation Board and was granted entrance into the conditional discharge program. On July 13, 1989 he was removed from the conditional discharge program and found guilty of possession of marijuana under 50 grams. Mr. Barts explained that he never complied with the terms of the conditional discharge program in that he did not pay the penalty so ordered nor did he supply the court with the requisite urinalysis from his physician. As of June 18, 1990 he owed the Egg Harbor Township Municipal Court a total of $205.00 in penalties and costs. On June 5, 1990 a bench warrant was issued for his arrest for failure to pay penalties. As of the date of the hearing Mr. Barts had an outstanding bench warrant for his arrest issued by the Egg Harbor Township Municipal Court for failure to pay penalties as set forth above. Mr. Barts presented an original money order in the amount of $205.00 which he represented he had not yet delivered to the Egg Harbor Township Municipal Court but that he intended to do so at the conclusion of the hearing. This money order admitted into evidence as P-6 was blank and had not been made out to the Egg Harbor Township Municipal Court as of time of the hearing.

DISCUSSIONS AND CONCLUSIONS

Pursuant to N.J.S.A. 5:12-1b(8), it is established 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 sanctions against the license 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 petitioner's misconduct constitutes a disqualifying offense under Section 86(c) of the Act. It asserts that petitioner's acquisition of funds in the amount of $809.00 from the New Jersey State Division of Unemployment and Disability Insurance while he was otherwise gainfully employed is, under the New Jersey Code of Criminal Justice, the crime of theft by deception, N.J.S.A. 2C:20-4. Notwithstanding that petitioner had not been prosecuted for the offense, it cites section 86(g) of the Act which provides that licensure may be denied to a person who has committed an offense enumerated in section 86(c)1 of the Act whether or not the offense has been prosecuted under the criminal laws of this state. Section 86c(1) of the Act sets forth the offenses under the New Jersey Code of Criminal Justice which if committed constitutes a per se disqualification for casino employee licensure. Section 86c(1) lists as a class of disqualifying offenses those involving theft and related offenses which constitute crimes of the second or third degree under N.J.S.A. 2C:20-1 et seq. Theft by deception, N.J.S.A. 2C:20-4, is included in that class. N.J.S.A. 2C:20-2(b) provides for the grading of theft offenses and states that:

"Theft constitutes a crime of the third degree if:

(a) the amount involves exceeds $500.00 but is less than $75,000.00."

Petitioner freely admitted that he was working while collecting unemployment from May 21, 1984 through July 30, 1984 in the total amount of $809.00 and that he knew that it was wrong. I thus

CONCLUDE that the Division has clearly established by a preponderence of the credible evidence that petitioner committed an offense which disqualifies him from licensure in the casino industry. See State vs. Moore, 158 N.J. Super. 68(App. Div. 1978).

A licensee faced with the existence of one or more of the 86(c) statutory disqualifiers is, nevertheless, afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his rehabilitation in accordance with the factors set forth in N.J.S.A. 5:12-90(h). These eight factors to be considered and evaluated 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 (licensee) 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 recommendation of persons who have or have had the applicant (licensee) under their

supervision.

In consideration of the petitioner's claim of rehabilitation, the following is found in this record:

1. Petitioner has been employed within the casino industry in various positions since 1980. He has held employment in the position of a bar porter, server, change carrier and his most recent employment at Trump Plaza being that of cocktail server.

2. Petitioner was convicted in February of 1988 of shoplifting an item worth $59.99 in violation of N.J.S.A 2C:20-11 and possession of a controlled dangerous substance (marijuana) in violation of N.J.S.A. 24:21-20(a)4. Petitioner's conduct since being convicted of these offenses reflects directly on the issue of his rehabilitation. Most notably, he has failed to pay the penalties ordered by the Egg Harbor Township Municipal Court although he has had over two years and four months to do so. His problems were exacerbated by his own failure to comply with the terms of the conditional discharge program thus increasing the amount of penalties due to the court. His actions in collecting unemployment in the amount of $809.00 while working is a serious offense especially when considered against the factors that (1) he was working in the gaming industry at the time; (2) he knowingly and intentionally committed the offense;

(3) Petitioner's justification for collecting the unemployment benefits simply are not justifiable since the only

explanation he could proffer was that the additional money would "come in handy". Petitioner offered no explanation as to why he was engaged in shoplifting or possessing marijuana in December of 1986 nor could any explanation be justifiable or in any way assist the petitioner;

(4) The dates of the offenses set forth above would offer petitioner sufficient time to establish his rehabilitation. Although time may be on petitioner's side, his inaction in failing to pay the Egg Harbor Township penalties, comply with the terms of the conditional discharge program and his failure to pay the judgment to the State of New Jersey Division of Unemployment and Disability Insurance mitigate against his cause;

(5) Petitioner's age at the time he wrongfully began to collect unemployment benefits was 24 years old and he was 26 years old at the time of his arrest for shoplifting and possession of CDS.

(6) The offenses set forth above have not been repeated by the petitioner. During the hearing he admitted that he no longer smokes marijuana and would not fraudulently collect unemployment benefits;

(7) There were no social conditions offered by petitioner as an explanation for his transgressions other than his need for money to pay rent and other bills;

(8) Petitioner offered no explanation as to why the

penalties and judgment as set forth above were not paid prior to the date of the hearing other than a lack of money due to a reduced work schedule. If petitioner had truly rehabilitated himself from his past transgressions, such would have been evident by the payment of the penalties and judgment set forth above together with successful completion of the conditional discharge program. Even at the time of the hearing there was a bench warrant outstanding for petitioner's arrest for failure to pay the Egg Harbor Township penalties. The record was held open for 15 days to permit the inclusion of additional evidence, most notably a receipt from the Egg Harbor Township Municipal Court that the penalties had been paid in full. As of the closing of the record petitioner did submit evidence that final payment was made to the Egg Harbor Township Municipal Court on June 18, 1990. The character references submitted by petitioner do not establish his rehabilitation. Such references fall short of assisting petitioner when considered against his conduct over the last six years. Petitioner described his life as "turning around since being employed at Trump Plaza. He no longer smokes marijuana, gives $1.00 per week to the United Way, assists in the casino olympics and talent night. However, I **FIND** that such representation is simply in opposition to petitioner's irresponsible conduct in failing to pay penalites which resulted in the issuance of a bench warrant. Rehabilitation occurs when an individual has consistently demonstrated fiscal and social responsibility including a respect for the legal system. Mr. Barts has failed to prove by clear and convincing evidence his rehabilitation since his lack of good character, honesty and integrity continued right up to the day of the hearing.

Therefore, **I CONCLUDE** that petitioner has failed to affirmatively establish his rehabilitation.

Petitioner has also failed to demonstrate his good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2). An individual possessing good character, honesty and integrity would not collect unemployment benefits while working when, as petitioner indicated, he knew it was wrong to do so. Compounding the problem petitioner only returned a meager sum of the judgment owed to the Division of Unemployment and Disability Insurance in December of 1989 and February of 1990 only because petitioner felt it would effect his casino license. Secondly, when offered the opportunity to rehabilitate himself through the conditional discharge program, petitioner again failed to demonstrate his good character, honesty and integrity by admittedly not providing the urinalysis required by the program and failing to pay the penalties.

I CONCLUDE, therefore, that petitioner has failed to demonstrate, by clear and convincing evidence, he possesses those characteristics as required by N.J.S.A. 5:12-89b(2).

ORDER

Accordingly, it is hereby **ORDERED** that the casino employee license number 014645-21 issued to Kenneth A. Barts be and hereby is **REVOKED.**

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 23, 1990
DATE

Joseph E. Kane
JOSEPH E. KANE, ALJ

7/25/90
DATE

Receipt Acknowledged:
Kim Woods
CASINO CONTROL COMMISSION

JUL 26 1990
DATE

Mailed to Parties: Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

pas

OAL DKT. NO. CCC-9353-87

EXHIBITS

FOR PETITIONER:

P-1 Letter dated June 14, 1990 from Scott Garawitz, Beverage Manager Trump Plaza Hotel and Casino;
P-2 Letter dated June 14, 1990 from Trump Plaza Beverage Management Staff;
P-3 Letter dated June 15, 1990 from Carol L. Leidy, Business Representative of Local 54;
P-4 Letter dated June 15, 1990 from Ramon Valentin, Assistant Executive Steward, Trump Plaza Hotel and Casino;
P-5 Letter dated June 14, 1990 from William Steele, Principal Uptown School Complex;
P-6 Receipts for payments to the Egg Harbor Township Municipal Court;

FOR RESPONDENT:

R-1 Employee License Renewal Application dated August 14, 1987;
R-2 Credit Bureau Associates Updated Credit Profile dated August 3, 1988;
R-3 Credit Bureau Associates Updated Credit Profile dated June 4, 1990;

R-4 Egg Harbor Township Municipal Court Certification of Court Records and attached Complaint/Summons/Disposition S608334 dated December 8, 1986;

R-5 Egg Harbor Township Municipal Court Certification of Municipal Court Records and attached Complaint/Summons Disposition S608334 dated December 8, 1989;

R-6 Conditional Discharge Final Disposition Report dated July 13, 1989;

R-7 Egg Harbor Township Municipal Court Notice of Failure to pay fine imposed after conviction for Shoplifting (Dkt. #C3100-86);

R-8 Egg Harbor Township Municipal Court Notice of Continuance re: Possession of Marijuana Conviction;

R-9 Egg Harbor Township Municipal Court Bench Warrant dated May 15, 1989;

R-10 Egg Harbor Township Municipal Court Order for payment of additonal fines on the charge of Contempt;

R-11 Egg Harbor Township Municipal Court Fax/Telecopier Cover Sheet and Bench Warrant copy dated June 5, 1990;

R-12 Division of Unemployment and Disability Insurance Claimant Ledger dated May 5, 1985;

R-13 DUDI Request for Field Investigation, Report of Field Investigation and Claimant's Benefit Payment and Employment Record dated September 4, 1985;

R-14 Division of Unemployment and Disability Insurance Notice of Hearing dated September 11, 1985;

R-15 Determination and Demand for Refund dated March 18, 1986 and attached Schedule of Overpayments;
R-16 Division of Unemployment and Disability Computer Printout of Claimant Inquiry, COD Inquiry, Refund Inquiry and Refund Payments Inquiry dated December 1, 1988;
R-17 Division of Unemployment and Disability Computer Printout of Claimant Inquiry, Refund Inquiry and Refund Payments Inquiry dated May 31, 1990;

WITNESSES

FOR PETITIONER:
Kenneth A. Barts

FOR RESPONDENT:
Kenneth A. Barts

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-332
LICENSE NO. 058258-21
REGISTRATION NO. 035196-40
OAL DOCKET NO. CCC 04973-89
ORDER NO. 90-47-8

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

Complainant,

v. ORDER

MELINDA R. BATTS,

Respondent.

A hearing 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 November 28, 1990,

IT IS on this 4th day of December 1990, ORDERED that the initial decision is modified as follows:

> The eight rehabilitation criteria contained in N.J.S.A. 5:12-90(h) and 91(d) must be analyzed prior to concluding that an offense is inimical and disqualifying pursuant to N.J.S.A. 5:12-86(c)(2). Donna Davis v. Division of Gaming Enforcement) 8 N.J.A.R. 301 (1985).

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 392-90
(On Remand CCC 4973-89)
AGENCY DKT. NO. 89-332

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
MELINDA R. BATTS,
Respondent.

James Armstrong, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)
Melinda R. Batts, respondent, pro se

Record Closed: August 28, 1990 Decided: October 12, 1990

BEFORE **LILLARD E. LAW,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The New Jersey Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) alleging that respondent Melinda R. Batts committed acts which disqualify her from holding a casino employee license and/or a casino hotel registration. The Division alleges that respondent was arrested, charged and found

guilty of the offense of Theft by Unlawful Taking, contrary to N.J.S.A. 2C:20-3 and, therefore, is disqualified pursuant to N.J.S.A. 5:12-86c(2). The Division also alleges that respondent lacks the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to N.J.S.A. 5:12-90b which incorporates section 89b(2) of the Casino Control Act (Act).

This matter was originally transmitted to the Office of Administrative Law (OAL) on July 10, 1989. A prehearing conference was held on August 8, 1989 followed by a hearing held on November 3, 1989 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing concluded after approximately 15 minutes where the Division placed its proofs on the record and the respondent offered no defenses to the Division's proofs. Subsequently, this administrative tribunal inadvertently executed an initial decision Failure to Appear, dated November 29, 1989. Respondent appealed to the Commission for another opportunity to be heard, which was granted. By way of an Order, dated January 16, 1990, the matter was remanded to the OAL for a hearing on all issues.

On May 9, 1990, the Honorable Beatrice S. Tylutki, ALJ, conducted a prehearing conference on the Order of Remand. The matter was assigned to the undersigned and the hearing was scheduled for August 28, 1990. The hearing was held on the scheduled date at the Atlantic City OAL. The hearing record closed on August 28, 1990.

UNDISPUTED FACTS

The following facts are undisputed and, therefore, are hereby adopted as **FINDINGS OF FACT** in this matter:

Respondent, Melinda R. Batts, is currently 30 years of age and resides in Atlantic City, New Jersey. Respondent is the holder of casino employee license no 58258-21 and casino hotel employee registration no. 35196-40. She has been employed as a cashier under her casino employee license by the Tropicana Casino Hotel (now TropWorld Casino and Entertainment Resort) (Tropicana) and Showboat Hotel and Casino (Showboat).

On February 27, 1987, between the hour of 2:00 a.m. and 2:30 a.m., respondent was arrested by the New Jersey State Police assigned to the Division (NJSP/DGE) while on duty at the Tropicana. The Tropicana Surveillance Supervisor had observed and video taped respondent remove money from her assigned cashier counter and place the money in her shoe. Subsequent to her arrest on February 27, 1987, she was instructed by the NJSP/DGE to remove her shoe where a $10 bill was found. Respondent was charged with Theft by Unlawful Taking, in violation of N.J.S.A. 2C:20-3 (P-3). On March 26, 1987, respondent appeared before the Atlantic City Municipal Court and was found not guilty of the charge (P-4).

On or about October 16, 1988, at approximately 10:15 p.m., respondent was arrested during the course of her employment as a coin cashier at the Showboat. It is alleged respondent removed a ten dollar ($10) bill from her assigned cash drawer, placed the money in a tip envelope and then placed the envelope in her back pant pocket. As a consequence, respondent was charged with the offense of Theft by Unlawful Taking, contrary to N.J.S.A. 2C:20-3.

On November 3, 1988, respondent was found guilty of the N.J.S.A. 2C:20-3 offense by the Atlantic City Municipal Court which imposed a fine of $25 and $25 in court costs against her. In addition, respondent was required to pay a $30 penalty to the Violent Crimes Compensation Board (VCCB) (P-2).

At the time of the herein hearing, respondent was employed as a housekeeper by Bally's Park Place Casino/Hotel (Bally's) in Atlantic City, New Jersey, under her casino hotel employee registration.

CONTESTED FACTS

Notwithstanding that respondent was found guilty of the offense of Theft by Unlawful Taking by the Atlantic City Municipal Court, she steadfastly maintains that the amount taken was not ten dollars ($10.00) but, rather, it was four dollars ($4.00) mistakenly left on her counter by a patron. Respondent testified, among other things, that a female patron had arrived at her redemption cashier station on the evening of October 16, 1988, with cups of slot tokens to be redeemed for cash. Respondent placed the slot tokens into the machine to be counted and deposited into a token collection bag. Four of the one dollar ($1.00) tokens did not pass

through the machine to be counted. Respondent removed the four one-dollar slot tokens from the machine and placed them on the counter, in full view of the patron. Respondent testified that she intended to give the patron four dollars from her cash drawer after she had completed counting the other slot tokens for redemption. Respondent asserts that the patron walked away from her work station without redeeming the cash for the four slot tokens respondent had set aside. Respondent insists she shouted to the patron to return to her redemption counter, however, the patron continued to walk away.

Respondent asserts she placed the four one-dollar slot tokens in her cash drawer where they remained until her break at approximately 10:00 p.m. Prior to her break, respondent removed the four one-dollar slot tokens and redeemed them for cash. She was observed removing a ten dollar bill from the cash drawer and place it in a tip envelope. Respondent insists that six dollars ($6.00) of the ten dollars ($10.00) was tip money she had received that evening. Respondent did not, however, place the ten dollar tip in the tip box, as required by policy and regulation. Rather, respondent admits she placed the ten dollar bill in the envelope in her pants pocket.

DISCUSSION 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 Ms. Batts' violation of N.J.S.A. 2C:20-3 constitutes a violation of section 86c(2) and, accordingly, her license and registration should be revoked.

I. The "Inimical Clause," N.J.S.A. 5:12-86c(2)

Section 86c(2) of the Act is 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 No. 79-CL-1, (February 26, 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 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 Appellant Division of our Superior Court has held that inimical means "...adverse to the policy of the Act and gaming operations...," that is to say, contrary to strict regulatory controls over all facets of casino activities. In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, (App. Div., July 11, 1985 A-993-82T5, A-317-84T5, A-525-84T5, A-880-84T5) (unreported at 17).

The facts demonstrate that respondent knowingly set aside four dollars in slot tokens of a patron and failed to provide the patron with cash for the tokens. This misconduct was committed by respondent during the course of her licensed employment as a redemption cashier. Respondent's exculpatory testimony was neither persuasive nor convincing. This is so, because respondent failed to report or alert her supervisor and/or security of the circumstances surrounding the event. In addition, respondent kept the money which belonged to the patron. Respondent's explanation that she combined the patron's four dollars with six dollars in tip money was incredible and not to be believed. State v. Taylor, 38 N.J. Super. 6 (App. Div 1955); In re Perrone, 55 N.J. 514 (1950). The facts also clearly demonstrate that respondent was found guilty of the offense of Theft by Unlawful Taking, in violation of N.J.S.A. 2C:20-3.

I **CONCLUDE**, therefore, the Division has established, by a preponderance of the credible evidence, that respondent did, in fact, violate the provisions of N.J.S.A. 2C:20-3 while employed as a cashier in the casino industry.

I further **CONCLUDE** the Division has demonstrated, by a preponderance of the credible evidence, that respondent's continued licensure and registration would be inimical to the policies of the Act.

II. Good Character, Honesty and Integrity as Required by Section 89b(2) of the Act as Incorporated in Section 90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Batts 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. When the Division raises an objection to licensure under section 89b(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 of the applicant for licensure. 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 strict regulatory provisions intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

Clear and convincing, as a standard, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that petitioner possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Respondent offered three witnesses, under subpoena, on her behalf. Mr. Terry Haverstick, housekeeping manager at Bally's, knew respondent Batts as an employee with Bally's housekeeping department. He asserted that respondent's record was fairly clean with no problems concerning the quality of her work. Respondent did have an attendance problem where she had received a written warning and suspension. Respondent was under suspension at the time of the hearing pending the investigation of an undisclosed incident which occurred in the casino on the Sunday prior to the hearing. Mr. Haverstick asserted there were no reported problems from hotel guests complaining about respondent stealing items from the guest's rooms.

Lena Pierce, housekeeping supervisor at Bally's, testified she was respondent's immediate supervisor and that respondent was a very good worker. Ms. Pierce, who had worked with respondent for approximately one year, asserted that respondent's attendance problems usually were caused by respondent's military reserve activities which generally occurred on weekends. Respondent was scheduled to work 40 hours per week, five days per week. She was usually scheduled to work Thursday through Monday, with Tuesday and Wednesday as her days off.

Ms. Pierce asserted that she learned of respondent's conviction of a theft charge only after she was served with the subpoena to appear at the herein hearing She stated that respondent had been honest in their working relationship and that the theft conviction did not affect Ms. Pierce's opinion of respondent.

Juanita Bond, an employee of the Trump Plaza Casino Hotel, testified that she was acquainted with respondent through the activities of the Pennsylvania Army National Guard. Ms. Bond is a PFC in the unit where respondent serves as a sergeant, E5. Ms. Bond socializes with respondent on weekends when they are both on duty with the military reserve unit. In addition, they converse by telephone once or twice a month. Ms. Bond testified that respondent had been honest with her since she had known respondent. Respondent told Ms. Bond about her arrest for theft about the time of the event. Ms. Bond expressed no opinion about respondent's good character or integrity.

Having considered all of the evidence before me, I am not convinced respondent possesses the requisite good character, honesty and integrity for casino

licensure. While she may be honest with those individuals with whom she has close contact, the evidence does not support a finding that respondent has the good character, honesty and integrity when dealing with strangers or in the work-place setting. The evidence clearly demonstrates that respondent knowingly withheld money from a casino patron while conducting casino business with the patron. The evidence also shows, by her own admission, that respondent secreted the patrons money, together with other money, on her person in violation of the casino policies, which caused her to be charged and convicted of the offense of Theft by Unlawful Taking.

I **CONCLUDE** that respondent has failed to demonstrate, by clear and convincing evidence, that she possesses the requisite good character, honesty and integrity for casino licensure.

PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license and/or registration of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license and casino hotel employee registration.

Section 130 of the Act sets for 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;

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 corrective action taken by the licensee to prevent future misconduct of a like nature from occurring;

There can be no doubt that the commission of a theft offense by a licensee in a casino while performing within the scope of her official duties creates a substantial

risk to the public confidence in the casino industry and the perceived integrity of gaming operations. The seriousness of respondent's conduct is established by her knowledge that she acted illegally and has not otherwise been mitigated. Under such circumstances, respondent's license and registration must be revoked.

ORDER

Accordingly, it is hereby **ORDERED** that the casino employee license and the casino hotel employee registration held by Melinda R. Batts be and is hereby **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION** who 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

12 October 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

10/16/90
DATE

Eleanor Sulick
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 18 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Melinda R. Batts

For the Respondent:

Melinda R. Batts
Terry S. Haverstick
Lena T. Pierce
Juanita Bond

EXHIBIT LIST

For the Petitioner:

P-1 New Jersey State Police Report, 10-17-88
P-2 Complaint
P-3 Investigation Report
P-4 Criminal Complaint
P-5 Videotape

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-424
OAL DOCKET NO. CCC 6493-88
ORDER NO. 89-48-11

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

Complainant,

v.

AMENDED
ORDER

BOARDWALK REGENCY CORP.,
d/b/a CAESAR'S ATLANTIC CITY,
NICHOLAS NIGLIO AND RACHEL BOGATIN

Respondents.

A hearing having been held before the Office of Administrative Law; and two initial decisions having been filed by the administrative law judge (ALJ) with the Casino Control Commission; and exceptions and replies to exceptions having been filed by the parties to both initial decisions; and the Commission having considered the entire record of these proceedings at its public meetings of August 16 and November 1, 1989; and for the reasons stated on the record of the Commission's public meeting of December 6, 1989,

IT IS on this 29th day of November 1990, ORDERED:

1. The ALJ's conclusion that N.J.S.A. 5:12-134 and N.J.A.C. 19:53-1.5(a) require casino licensees to treat their employees equally and fairly is adopted. However, the ALJ's conclusion that these provisions of Casino Control Act and Commission regulations do not apply to individual casino employees is rejected and this issue is remanded to the OAL for further proceedings. Because the ALJ formed an assessment of the credibility of respondents Niglio and Bogatin, it is requested that the

hearing on remand be conducted by an ALJ other than the one who heard this matter initially;

2. The ALJ's conclusion that N.J.A.C. 19:45-1.12(a) regulates the conduct of both casino licensees and individual casino employees is adopted;

3. The ALJ's recommendation to dismiss Count III is adopted subject to the following modification: The Commission did not intend to incorporate all applicable federal, state, and local laws into the standard anti-preemption language of Boardwalk Regency Corporation's (BRC) Certificate of Operation, thereby investing itself with jurisdiction to enforce any and all legal obligations related to the operation and maintenance of a casino hotel. Therefore, the dismissal of Count III is based upon a failure to state a cause of action;

4. The ALJ's conclusion that respondent BRC violated N.J.S.A. 5:12-134 and N.J.A.C. 19:53-1.5(a) by intentionally discriminating against three of its employees on May 13, 1988, is adopted. However, based upon the uncontradicted evidence in the record, the initial decision is modified to find BRC liable for a similar discriminatory reassignment of two of its employees on May 7, 1988;

5. The ALJ's recommendation that BRC be required to pay a civil penalty of $15,600 as a sanction for these five violations is rejected. BRC's violations are extremely serious both because of the inherently abhorent nature of race and sex-based discrimination and because of BRC's prior regulatory violations which, like those involved herein, are marked by a marked by a willingness to cater to preferred patrons with little or no regard to the regulatory process. Among

the prior regulatory violations are State v. Boardwalk Regency Corp., 11 N.J.A.R. 29 (1983), State v. Boardwalk Regency Corp., et al., Docket No. 84-246 (Commission decision October 28, 1985), and State v. Boardwalk Regency Corp., Docket Nos. 87-290 and 88-147 (Consolidated) -- all of which Commission officially notices pursuant to N.J.S.A. 5:12-107(b). In addition, the Commission believes that the corrective action taken by BRC was inadequate. Upon consideration of the factors of N.J.S.A. 5:12-130, a penalty of $250,000 is hereby imposed. Furthermore, BRC is hereby required to develop a training course for all of its employees, the focus of which shall be compliance with the Act and regulations with particular emphasis on appropriate methods for dealing with high roller patrons; and

6. The ALJ's finding that the Division failed to prove by a preponderance of the credible evidence that BRC and Bogatin instructed a pit boss not to supervise Robert Libutti's play on May 13, 1988, is adopted and Count II is therefore dismissed.

IT IS FURTHER ORDERED that the foregoing civil penalty be 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 training program referred to above be submitted to the Commission for approval within six months of the date of this order.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6493-88
AGENCY DKT. NO. 88-424

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
BOARDWALK REGENCY
CORPORATION, d/b/a CAESAR'S
ATLANTIC CITY, AND
RACHEL BOGATIN, CASINO
SHIFT MANAGER; Respondents.
NICHOLAS NIGLIO, PARTICIPATING

Timothy Ficchi, Deputy Attorney General and **Fredric E. Gushin**, Assistant Director, for Petitioner (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)
Gregory Parlimen, Esq., for respondent Boardwalk Regency Corporation (Pitney, Hardin, Kip and Szuch, attorneys)
Jack Gorny, Esq., for respondent Rachel Bogatin (Horn, Kaplan, Goldberg, Gorny and Daniels, attorneys)
Lloyd D. Levenson, Esq., for participant Nicholas Niglio (Cooper, Perskie, April, Niedelman, Wagenheim and Levenson, attorneys)

Record Closed: June 16, 1989 Decided: August 10, 1989

BEFORE **EDGAR R. HOLMES**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) alleges that Boardwalk Regency Corporation (Caesars) removed black and female dealers from a craps table and substituted white male dealers for them in order to gratify the perceived wishes of a casino patron. It alleges that this transfer of individuals was effectuated by Nicholas Niglio (Niglio) and Rachel Bogatin (Bogatin) and that, in addition, Bogatin instructed a female pit boss not to "watch" the patron play, although a pit boss is required by Rule to supervise the game.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on June 26, 1988, alleging in the first count that Caesars, Niglio and Bogatin violated N.J.S.A. 5:12-134(b) and N.J.A.C. 19:53-1.5(a), by failing to afford an equal opportunity to certain Caesars' employees because of their race, color and sex. The Division alleged in the second count that respondent Caesars and participant Bogatin violated N.J.A.C. 19:45-1.12(a)(6) and Caesars' internal supervision controls by directing a pit boss not to "watch" the conduct of the craps game at table eight on May 13, 1988. In the third and final count, the Division alleged that respondent Caesars violated N.J.S.A. 5:12-96(a), and its Certificate of Operation, by failing to adhere to the certificate and by failing to operate the casino in accordance with Title VII of the Civil Rights Act of 1964 and New Jersey's Law Against Discrimination. N.J.S.A. 10:5-1 et seq. (NJLAD).

The respondents answered the complaint and requested a hearing pursuant to N.J.S.A. 5:12-107. The matter was transmitted to the Office of Administrative Law (OAL) on September 1, 1988, to be heard 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 May 16, 1989, the respondents moved for Summary Judgment.

By way of a partial initial decision filed on May 24, 1989, the motions of Niglio and Bogatin to dismiss count one of the complaint as it applies to them was granted.

The motion of Caesars to dismiss count one of the complaint as it applied to it was denied and the motions of Bogatin and Caesars to dismiss count two were denied. The motion of Caesars to dismiss count three was granted. Niglio then moved for participation pursuant to N.J.A.C. 1:1-16.4 et seq. Participation was granted on the grounds that a full determination of the case could substantially, specifically and directly affect him. He may be subject to a future proceeding as a result of his testimony or the testimony of others in this proceeding.

A plenary hearing convened on June 5, 1989 and was concluded on June 16, 1989. The time in which to file an initial decision was extended by Order of the Commission until August 14, 1989.

ISSUES

The issues identified at a prehearing conference held on December 19, 1988, and amended during the hearing, which were not disposed of by the partial initial decision are:

A. Did respondent Nicholas Niglio intentionally discriminate against Joel Respes, Pamela Jiacopello, and/or Deborah O'Kane on May 13, 1988, by reassigning them and replacing them with white male gaming employees so as to provide one Robert Libutti, a patron, with an all white male gaming staff?

B. Did respondent Rachel Bogatin intentionally discriminate against Joel Respes, Pamela Jiacopello, Deborah O'Kane, Mary Ann Egeli, and/or Catherine Daidone on May 7, 1988 and/or on May 13, 1988, by reassigning them and replacing them with white male gaming employees so as to provide Robert Libutti, a patron, with an all white male gaming staff?

C. If the allegations of A and B above are proven, is respondent Caesars liable for the actions of Niglio and/or Bogatin?

D. Did respondent Caesars and/or Rachel Bogatin instruct Carol Ungerer not to supervise the play of Robert Libutti as she is required to do pursuant to

N.J.A.C. 19:45-1.12(a)6 and Caesars' own internal controls on May 13, 1988?

G. Whether the allegations set forth in issues A, B and/or C above, if proven, violate N.J.S.A. 5:12-134b and/or N.J.A.C. 19:53-1.5(a)2?

I. If the allegations set forth above are proven, what penalty, if any, should apply?

SUMMARY AND DISCUSSION OF DOCUMENTARY AND TESTIMONIAL EVIDENCE

The Casino Control Act (Act) requires an applicant for a casino license to agree to afford an equal employment opportunity to all prospective employees consonant with N.J.S.A. 10:15-1 et seq., the New Jersey Law Against Discrimination. N.J.S.A. 5:12-134b. Paragraph c of Section 134 of the Act requires the applicant to formulate and abide by an affirmative action program of equal opportunity.

In addition, the Commission enacted regulations to insure a balanced workplace in casinos. N.J.A.C. 19:53-1.1 et seq. The regulations require that the policy of nondiscrimination continue during the whole course of actual employment. N.J.A.C. 19:53-1.5.

Accordingly, Caesars prepared an affirmative action plan for the Commission in connection with its application for a Certificate of Operation in 1979. The plan was updated on April 3, 1980, August 15, 1980 and in September 1988.

Caesars stated policy is the provision of equal employment opportunity to everyone. It seeks out female and minority candidates. It provides, through its Upward Mobility Program and its Supervisory Skills Training Program, vehicles for identifying, training and promoting female and minority employees.

The Division disparages these efforts and offered into evidence the 1986, 1987 and 1988 reports of the Commission's Division of Affirmative Action and Planning in order to show that Caesars was not in compliance with the Act or its own Affirmative Action Plan.

These reports are chatty but they tend to ramble. In one place they chastise Caesars for being in last place among the casinos in a category of female employment, in another place they administer a pat on the back to Caesars for showing gains in a category of minority employment. Apparently there is an ongoing dispute between Caesars and the Division of Affirmative Action and Planning over who is responsible for keeping statistics of female and minority employment by building contractors.

The best, or worst, that can be said about Caesars' record of affirmative action, according to these reports, is that Caesars has achieved mixed results in maintaining affirmative action goals.

Caesars offered rebuttal evidence by way of tables prepared by the Division of Affirmative Action and Planning of the Commission for the periods ending March 31, 1987, March 31, 1988 and March 31, 1989. These tables merely confirm that Caesars, like other casinos, has achieved mixed results in affirmative action.

The gravamen of the complaint filed in this matter, however, is not a failure by Caesars to maintain affirmative action goals; it is that very specific instances of conduct were discriminatory.

There does not appear to be much conflict in this case about what actually happened. Black and female dealers at Caesars were moved to other tables and replaced by white male dealers to accommodate a player who was perceived to favor white male dealers at the craps table and a female pit boss alleges she was instructed not to "watch" his play. The conflict in the case is over who gave the order to transfer the dealers and what was intended by the order given to the pit boss which she interpreted to mean that she was not to "watch" the game.

The resolution of this conflict is essential for the penalty phase of the case. Obviously the higher up into casino management the origins of the conduct can be traced, the more grave the conduct appears. Certainly a racial squabble among low level employees, especially in a company actively pursuing an affirmative action program, although reprehensible in itself, may not lead to the conclusion that the employer, in its corporate capacity, has a failed policy or requires a penalty to force it to take a corrective action. On the other hand, where the conduct reflects a

corporate policy, drastic measures may be required. In order to illustrate the conflict, the testimony of the witnesses is summarized below.

William Frasco is an audit agent for the Division and has been assigned to Caesars since August of 1986. He was assigned to review the gaming activity of Robert Libutti. of whom it was rumored that he preferred white male dealers to black or female dealers at his table. He discovered that Libutti gambled at Caesars on April 1, April 30, May 7 and May 13, 1988. On April 1, 1988, Libutti gambled about an hour and placed average bets of $4,400. On April 30, 1988, Libutti gambled about an hour and a half and made average bets of $4,500. On May 7, 1988, Libutti gambled approximately one hour and 25 minutes and his average bet was $8,000. On May 13, 1988, Libutti gambled for a little over two hours beginning at approximately 7:10 p.m. and his average bet was about $6,000. Libutti's total loss over the four days was $15,600.00.

These kinds of records are maintained for several reasons, one of which is to "rate" players in order to bestow complimentary items and services upon them Libutti was a rated player and considered to be a "high roller," which is, apparently, a term of great esteem in gambling argot. It describes a person who wagers vast sums of money upon insignificant events such as the turn of a card or the throw of the dice. Accordingly, Libutti was a favored person in casinos.

Lyndon Stockton is a Senior Marketing executive for Caesars World Marketing Corporation; a sister corporation to Caesars . He was first employed on May 12, 1988. His major function is to solicit table game customers for Caesars' Atlantic City and Tahoe casinos. He does this by mail, telephone and personal contact. He frequents sporting events and restaurants in search of qualified customers. He remembers their birthdays and anniversaries with phone calls or flowers. He develops strategies for introducing players to Caesars and maintaining their interest in the casino.

Stockton knew Libutti before he worked at Caesars. Stockton first met Libutti when he, Stockton, worked at Trump Plaza as a casino host. On May 13, 1988 Stockton got a phone tip from someone at Trump Plaza that Libutti was on his way over to Caesars to play craps. Stockton met Libutti at the door. A table had already been roped off for Libutti's party. Stockton ordered Libutti's favorite brand of

champagne and the special glasses Libutti is fond of. He stood with Libutti as he gambled to insure that Libutti was comfortable. Although he had heard rumors that Libutti was abusive, Stockton said he never saw Libutti abuse anyone. He said that any rumors concerning Libutti's preference for white male dealers were false. He said Libutti was not a racist or a bigot. Stockton said that he knew this because he, Stockton, was black, and had hosted Libutti in Trump Plaza for years without incident.

Mario DeLuca has been employed at Caesars since its opening in 1979. He has been a craps dealer, a blackjack dealer, a box person, and a floor person with pit boss credentials who can occasionally fill in as a pit boss. A craps pit boss is responsible for the eight craps games which comprise the pit. A floor person is responsible for supervising one game; dealers and box persons actually operate one game. Floor persons, box persons and dealers are supervised by the pit boss. A pit boss observes the games to make sure correct procedures are followed and resolves disputes beyond the jurisdiction of the floor person. A pit boss is also responsible for the chips and money count at each table and for the work schedule of the crew.

DeLuca testified that as a pit boss for Caesars he has never been told not to "watch" a game. On April 30, 1988, he was told by Nicholas Niglio, the assistant casino manager, not to "crowd" a game played by Robert Libutti at table eight in his pit. An assistant casino manager is one step above a shift boss who supervises pit bosses.

DeLuca did not define the expression "crowd a game". In answer to a question, he acknowledged the existence of two expressions common in casino argot: "hawk the game" and "sweat the money." He defined only the expression "sweat the money." When a casino employee "sweats the money", the employee stands close to a losing table and assumes a "nervous" or "irritable" expression. He said Caesar's policy was not to "sweat the money."

As a result of being told not to "crowd the game" DeLuca observed Libutti's play from approximately six or eight feet away from the craps table. He did not feel that the instruction diminished his capacity to supervise the game. He recalls talking to Carol Ungerer who was the floor person on the next table from Libutti. He told her why he was watching Libutti's play from her table, table seven, and not from

table eight, Libutti's table, but he does not recall what was actually said. He recalls that she began to watch Libutti's play and Richard Stack, the shift boss, told her not to watch table eight. He noted that she was embarrassed.

DeLuca also identified Pamela Jiacopella, Joel Respes and Debra O'Kane as competent employees of Caesars.

DeLuca recalled that two black women were floor persons on Libutti's table on April 30, 1988.

Maryann Egeli is a dice dealer and boxperson for Caesars. A dice dealer accepts bets and paces the game. She says they usually have fun. On May 7, 1988, she worked the 6:00 p.m. to 2:00 a.m. shift. Many employees have staggered starting times. As a result, a witness may refer to two different pit bosses or shift managers during a single shift. Egeli was a dealer on table 17, pit four. Joseph Bochen was her pit boss that night and Richard Stack was the shift boss. Stack came around and put reserve signs on her table. He told her a big player was coming in and that she would be removed from the table because the "man didn't want any women on the game." Joseph Bochen told her the "man" was Libutti. At 8:30, her break time, she was moved to a different table by Joseph Bochen, her pit boss. Libutti had not yet arrived. She was replaced at table 17 by a white male. During the evening she heard from other dealers that Libutti preferred only white males on his game. She testified that she was shocked by the move and has instituted suit against Caesars.

At a sworn interview Egeli told the Division that she "just figured this guy (Libutti) was superstitious, didn't want women around. It really didn't bother (her)." At the hearing she explained this discrepancy in her testimony by saying "You learn not to say too much ... So I would like to keep my job ... So I didn't say anything."

Egeli testified that as a result of her move, she lost no income because dealers pool their tips. She also testified that she instituted suit because after she thought about the incident she became disturbed. She concluded her testimony by saying that she was 29 years old, and she had never before experienced discrimination solely because she was a woman.

Catheryn Daidone has been employed by Caesars for nine years. She was a box person on May 7, 1988, and has since become a floor person. On May 7, 1988, she was assigned to table 17 pit four on the swing shift with Maryann Egeli. She said Nicholas Niglio came by and told Joe Bochen, the pit boss, to reserve the table by roping it off. Later, Joe Bochen told her to move to another game because a man was coming in who didn't like women or blacks on the game. Her co-workers told her the man coming in was Libutti. Bochen also told her that Libutti didn't want the pit boss "looming over the table watching the game over his shoulder." Daidone was replaced at table 17 by a white male. She says she wasn't bothered by the move because she knew it did not have anything to do with her competence.

Joseph Bochen has been employed by Caesars for 10 years. He is a pit boss. He said that he had never been told not to "watch" a game. He defined the expression "hawking the game" as standing close to the table, with negative body language, arms crossed, stern demeanor, pacing near the table, overtly worrying that the table is losing money. He equated the expression "hawking the game" with "sweating the game."

Bochen recalls that at about 6:30 one night in May, Rachel Bogatin, shift manager, told him that Libutti would be playing on a reserved table and that Libutti did not want women or blacks or minorities dealing to him. She also asked him to arrange the table accordingly.

Bochen then moved Egeli and Daidone to another table. He said he explained his actions to them and that they acquiesced in the move. They were replaced with white males. Later that evening Libutti came to play at table 17. Bochen said that Rachel Bogatin also told him that Libutti doesn't "like pit bosses hawking the game." He said this was a common term in the business and he knew exactly what she meant. He said it is Caesars policy that no one is to hawk a game. The employees are told that there is "plenty of money", so there is no need to "sweat the game."

As a result of this instruction Bochen did not show Libutti any extra attention other than to make eye contact and smile at him. He continued to monitor the game and the chip situation with the floorman and he observed the game from the pit boss's podium.

Joel Respes is black. He is a floor person employed by Caesars for nine years. In 1983 he received the company's Superstar award. On May 13, 1988, he was on the day shift, 12:45 p.m. until 8:45 p.m. He was a relief floorperson assigned to pit two and was to relieve the floorpersons on tables eight, one, seven and two. He said that Carol Ungerer was the pit boss and that Jack Nolan was the shift manager.

Respes started his shift on table eight relieving the floor person there. The betting minimum on table eight was raised from $5 to $500 to accommodate a "high roller." The employees speculated that Libutti was coming in to play. Libutti's supposed preference for white male dealers was discussed.

Shortly thereafter, two female employees of Caesars were removed from the table, Debbie O'Kane, a dealer, and Pamela Jiacopello, a box person. Two white males replaced them. Carol Ungerer, the pit boss made the changes. She said to Respes "Well, I had them taken care of. I don't know what I'm going to do with you yet." Later, Respes was switched to table seven and the table seven floor person, a white male, took Respes' place at table eight and remained there. At a few minutes after seven, Libutti arrived and played on table eight. Respes said he asked Ungerer why the switch was make and she told him "Well, this is what Caesars wants. They want to avoid any confrontation or any unusual circumstances."

Respes said that Ungerer also instructed the entire pit not to look at table eight and to exit the pit from the other side. Ungerer told Respes she was not allowed to "look" at the game and that "they don't even want me over there." He says she did not go near table eight as a result.

After work Respes left the casino but returned after a few minutes and related the events of the evening to a representative of the Casino Control Commission. She took his report and advised him to notify the affirmative action officer for Caesars, Roland Coleman. The next day, he did notify Coleman.

Respes said that the incident caused him to feel hurt, embarrassed and humiliated. It reminded him of the treatment his father received as a high school student in Philadelphia. His father wanted to be an engineer. A white male teacher told his father that he couldn't become an engineer because he was black.

Respes asked rhetorically: "How much do I have to accomplish? How much do I have to do?"

Respes told his children what had happened. He told them he felt as though he had encountered a sign that read "For Whites Only."

Roland Coleman, Caesar's Affirmative Action Officer, told Respes that the matter would be investigated. Coleman told Respes that he had already spoken to the president and two vice presidents concerning the matter and that the company did not condone the action. Respes subsequently filed suit against Caesars over the incident.

Respes says that Bogatin came to him after the event and talked to him "off the record" in Niglio's office. She said she was sorry it happened and that it never should have happened. She said she wished she "had the guts to stand up and say No! This is not right! It is wrong!"

Deborah O'Kane has been employed at Caesars for ten years. She started as a cocktail waitress and, through the Upward Mobility Program, has become a craps dealer.

O'Kane was on the 1:00 p.m. to 8:00 p.m. day shift on May 13, 1988, assigned to pit two, table eight. On that day, after her break, O'Kane was reassigned to another table by the pit boss, Carol Ungerer. Ungerer told her earlier that she would be reassigned because the table was reserved for Libutti and that he didn't want women on the table. The table went "dead" after the minimum bet was raised to $500. Because she was bored and knew she was going to be transferred anyway, O'Kane asked Ungerer to transfer her to a busy table and her request was honored.

O'Kane has joined with Respes and Egeli in the civil suit against Caesars.

Pamela Jiacopello has been employed at Caesars for 12 years, beginning as a telephone operator and successively becoming a front desk clerk, a rooms controller, a craps dealer and now a boxperson. On May 13, 1988, she was a relief box person on the 1:00 p.m. to 9:00 p.m. shift assigned to pit two. When Libutti arrived she was relieving the box person on the table reserved for him. She was "tapped off" the

game by a white male. She knew this was going to happen because the pit boss, Carol Ungerer, previously told her it would happen. Ungerer had explained to her that Libutti did not like women on the game.

Jiacopello said that she was not offended by being removed from table eight. She says she and O'Kane joked abut Libutti's preferences. She said she had heard about Libutti and was glad she did not have to serve as the box person on his table.

Craig Isaia is Casino Administration Director for Caesars. He has been employed at the casino for ten years. He reports to Nicholas Niglio. He related that he is responsible, among other things, for overseeing the evaluation of casino employees and for scheduling casino employees. He testified that Maryann Egeli, Catherine Daidone, Deborah O'Kane, Joel Respes and Pamela Jiacopello were all competent employees capable of handling the play of a high roller.

Carol Ungerer is a craps floor person employed at Caesars for ten years. She sometimes worked as a pit boss because she is dual rated (both as a floor person and as a pit boss) but she has elected not to work as a pit boss any longer.

Prior to May 13, 1988, she recalls an occasion when Libutti gambled on a table next to hers on a night she was a floor person. This must have been on April 30, 1988, according to the testimony of others.

She recalls watching Libutti play from her vantage point as a floor person on an adjacent table. Richard Slack came up to her and told her that Nick Niglio said to him that he thought Ungerer was the pit boss because she spent so much time watching Libutti's play. She acknowledged that this reprimand was proper. Her job was to supervise the play on her table.

On May 13, 1988, Ungerer was working as a pit boss in pit two on the 12:45 to 9:30 p.m. shift. Shortly after she opened she was told by John Miller, the shift manager, to raise the minimum on a table to $500. She learned Libutti was expected. He arrived at approximately 7:05 p.m.

Ungerer recalled her conversation with Mario DeLuca when he was the pit boss during Libutti's play on April 30th. She recalled that he told her he was not

supposed to be near Libutti's table or words to that effect. In addition, she claims that Bogatin told her not to "watch" the game. Although on cross examination she said she might have only "understood" she was not to "watch" the game.

In any case, Ungerer understood the instruction in its literal sense and slavishly followed it, even hiding behind a pillar to block her view of Libutti.

Later in her testimony, Ungerer recalled that Richard Slack found her behind a pillar and told her she did not have to hide. She says he told her "you just aren't to watch the game." She also acknowledged that at her interview with the Division, she said several times that she did not know who instructed her "not to watch the game."

Ungerer says she was also told on May 13, 1988, by Rachel Bogatin "that there weren't to be any female personnel on the table." This was at approximately 4:00 or 5:00 p.m.

Earlier, she says she had asked Debbie O'Kane, who was assigned to Libutti's table, which was not yet active, if she wanted to work table one so as not to be bored. O'Kane said "yes" and went to table one. When Libutti arrived, Ungerer did not bring O'Kane back to work at Libutti's table.

Ungerer says that Bogatin also told her to take Respes off the game "...to avoid a possible confrontation later." Ungerer replaced Respes with a white male. She told Respes she was doing it "... to avoid a confrontation later on." Ungerer says she asked Bogatin twice if she meant for her to move Respes. She says she asked her twice because she sensed trouble.

Ungerer testified several times that she was a "stickler for rules." Unfortunately she was not a stickler for accuracy. She was not untruthful in the sense that she consciously misrepresented the truth. She was merely careless of the truth. She interpreted the events of April 30, 1988, to mean that the pit boss should not, literally, watch the game. Therefore, she interpreted every order or instruction thereafter to mean "do not watch the game," even if the words used were different. This was obvious during both direct and cross examination. In response to questions, she would say she "probably" said this or that. In other words, she

assumed that she said something appropriate at the time and then supplied an appropriate answer to the question at the hearing.

Rachel Bogatin is a dual rate shift manager at Caesars and has been employed there for ten years. She worked her way up from blackjack dealer to floor person to pit boss to dual rate shift manager. She reports to Nicholas Niglio.

On May 7, 1988, Bogatin had been a dual rate shift manager for about four weeks. Libutti played at the casino that evening. Bogatin denied that she told Joe Bochen to move dealers on May 7, 1988, because it was not until sometime between May 7, 1988, and May 13, 1988, that Bogatin heard the rumor that Libutti was verbally abusive or that he preferred white males to deal to him.

On May 13, 1988, Bogatin met Niglio on the floor of the casino at about 5:20 p.m. She told him that they had raised the minimum at table eight in the expectation that Libutti was coming and had $5,000. chips on the game. She said that Niglio told her to "leave white males on the game." Later Bogatin asked Niglio what she should do about Ungerer. Niglio told her to leave her there, "she won't be watching the game anyway." Bogatin then told Ungerer "Don't stand on top of the game."

Bogatin left the casino floor on her break when Libutti arrived. When she returned she divided duties with Richard Slack, another shift manager, because he was more experienced at craps than she was. She did not see Libutti play except to walk through once in order to see what he looked like. She told Slack about Libutti's preference for white males.

Bogatin acknowledged telling Respes that she was sorry for the incident and that she promised him it would never happen again.

She also recalls that Niglio told her, just prior to their Division interview, that he had no idea about Libutti's preferences. She claims this remark stunned her because of the conversation she had with Niglio on May 13, 1988, at about 5:20 p m

Jeffrey Johnson is a dual rate pit manager employed ten years by Caesars He was a pit manager on April 30, 1988, on the 8:45 p.m. swing shift. He was assigned

to pit two. He relieved Mario DeLuca, the day shift pit boss. DeLuca told him that Robert Libutti was playing on table eight and that Libutti requested that "pit managers not stand next to his game." He said this was not an unusual request. He also reported that Libutti's table was staffed with some women, one of whom was black. He said Libutti was not abusive.

Eric Reynolds has been employed as a training manager for Caesars for the past three years. He is experienced in the areas of training and development, affirmative action, employee relations and personnel. He developed the Upward Mobility Program at Caesars. He described the Upward Mobility Program, the Supervisory Training Program and the efforts of Caesars to recruit minority and female candidates for the programs. The Upward Mobility Program includes a unit on valuing diversity; i.e., emphasizing the salutory effect of a multi-cultural work force.

The Upward Mobility Program also deals with subjects such as "overcoming stereotypes," "getting into the club," "the glass ceiling," individual experiences of upward mobility and the "feelings" that accompany these experiences. He described Nicholas Niglio as a strong supporter of, and a vigorous participant in, the Upward Mobility Program.

In addition, Reynolds said that all new employees are given an orientation course which includes a segment on affirmative action, equal opportunity employment and sexual harassment.

John Groom is Senior Vice President of Casino Operations for Caesars Atlantic City. He has been employed by them for ten years. He recruited Nicholas Niglio away from Resorts. He wanted Niglio to improve staff professionalism and recruit qualified females and minorities to Caesars. He says Niglio has a reputation for expertise in these areas. He has been pleased with Niglio's performance in staff development and recruitment.

Groom recalled a meeting on May 16, 1988, at which time the transfer of Joel Respes was discussed. It was a high level meeting which included the president and chief operating officer of the casino, and others. They ordered an investigation. Groom also immediately advised the shift manager on duty that no personnel

would, in the future, be moved on account of sex or race. He asked Niglio to so advise all shift managers and to have them instruct pit managers of the policy. He also made the decision to move a dealer for any reason, the shift manager's decision rather than a pit manager's decision.

Groom acknowledged on cross examination that during his employment interview of Lynden Stockton (whom Groom also recruited), that Stockton included Libutti in his following.

Groom recalled that on May 13, 1988, he learned sometime during the day that Libutti was coming to play in the casino. That evening Groom introduced himself to Libutti at table eight. Stockton asked Groom at that time if he had heard that Libutti didn't like blacks or women on the game. Groom said he had not heard that. He found it so unusual that he wanted to share it with someone. He saw Niglio on the floor and told him about Libutti's preference. He noticed that Niglio was in a hurry; he estimated the time was about 6:30 p.m.

Jack Miller is a casino shift manager at Caesars. He was so employed on May 13, 1988. He reserved a table for Libutti on that day; table eight , pit two. Miller said Ungerer told him that she had advised O'Kane that O'Kane would be moved when Libutti arrived. He recalls she said to him that "they won't have to worry about moving me because I won't be watching the game."

Dan Geiger operates a limousine service. He produced a log book of his company which indicated that a limo was ordered for Mark Juliano at Caesars for 5:30 p.m. on May 13, 1988. He recalled that Niglio was with Juliano on that date and accompanied Juliano to Philadelphia. He said the limo left at 5:30 p.m.

Nicholas Niglio has been employed by Caesars for two and a half years. He is the assistant casino manager. He was formerly the training supervisor at Resorts casino. He included affirmative action and equal opportunity training in his supervision. He instituted an upward mobility program at Resorts.

Niglio emphasized his commitment to affirmative action and gave numerous illustrations of his success in finding and promoting female and minority workers at Caesars. For instance, during his tenure at Caesars, he claims 11 women and four

minority workers have been promoted to pit manager out of 18 total promotions. He claimed that he was notorious in Atlantic City casinos for recruiting away from other casinos qualified female and minority employees for Caesars.

On April 1, 1988, he was tipped off that Libutti was coming to Caesars to gamble. Libutti played in pit two where the pit boss was black. Libutti told a Caesars casino host that the table crew was very professional. Consequently, Niglio sent each one a commendation letter. The crew included an oriental male, an hispanic male and a white female. Niglio said that he never heard any of the rumors about Libutti's supposed preferences against black and female dealers, or pit bosses who "hawked" him, until after May 13, 1988.

On May 13, 1988, Niglio arrived at work at about 3:15 in the afternoon. He did office work until 4:00 p.m. when he attended a meeting in the executive suite. The meeting lasted until about 5:15 p.m. Niglio said he left the casino with Mark Juliano to attend a viewing in Philadelphia. On his way out through the casino, he spoke to several people. He has no recollection of speaking to Rachel Bogatin.

Niglio says that the limo ordered for that date departed for Philadelphia at 5:30 p.m. and returned at 10:00 or 10:30 p.m. On his return Niglio learned that Libutti lost $200,000 that evening.

The next day, according to Niglio, he learned for the first time about the transfer of black and female dealers. He emphasized that the order to transfer black and female employees did not come from him as Bogatin alleges. He said he never knew about Libutti's alleged preferences.

Niglio said that sometime after May 7, 1988, but before May 13, 1988, Niglio discussed Libutti with Stockton. Stockton described Libutti to Niglio as aggressive, imposing and intimidating. He says Stockton did not tell him about any preferences for white male dealers.

Niglio also claims that he could not have been told of Libutti's preferences for white male dealers by Groom as Groom alleges because he was in Philadelphia at the viewing at the time when Groom says he told him about the preference. Niglio says

he learned from Coleman, who did the investigation for Caesars, about the conflict with Bogatin in their respective testimony.

Roland Coleman is Vice President for Human Resources at Caesars and has been so employed for approximately one year. He has been with Caesars since August of 1983, first as Director of Employee and Labor Relations, then as Executive Director of Administration, then as Vice President for Administration until his recent promotion.

On May 16, 1988, Joel Respes reported to him the transfer which occurred on May 13, 1988. Respes said that he had been discriminated against and humiliated by the transfer. Coleman told Respes that Caesars did not condone the transfer. Coleman reported the incident to counsel, to the senior Vice President for Governmental Affairs and to the Chief Executive Officer of the casino. A high level meeting convened and Coleman was requested to conduct an investigation. Coleman took statements from numerous persons. He was unable to conclude who was responsible for initiating the transfers on May 13, 1988, because Bogatin and Niglio gave conflicting versions of the events. He did not investigate the May 7, 1988 incident.

Coleman also described the reports filed with the Commission which illustrate the progress of licensees in complying with N.J.A.C. 19:53-1.5e. The regulation sets employment goals for minority and female workers in the casino hotel industry.

Coleman discussed in great detail the percentages of minority and female representation in various casino department job categories and Caesars ranking with respect to other casinos. For instance, he testified how the industry average for certain casino positions compared with Caesars and Caesars' rank among casinos. His testimony can be illustrated by the following table:

1987			1988			1989		
Industry Avg/Caesar/Rank			Industry Avg/Caesar/Rank			Industry Avg/Caesar/Rank		
Minority Dealers								
29%	32%	R3	31%	34%	R2	32%	34%	R4
Minority Boxperson								
12%	10%	R6	14%	13%	R5	17%	18%	R4
Minority Floorperson								
16%	21%	R2	17%	21%	R3	17%	22%	R1
Minority Pit Boss								
17%	19%	R4	17%	25%	R2	15%	18%	R2
Female Dealers								
39%	34%	R10	40%	35%	R12	40%	38%	R8
Female Boxperson								
19%	15%	R7	24%	19%	R8	23%	17%	R8
Female Boxperson								
35%	33%	R5	35%	35%	R7	34%	34%	R7
Female Pit Boss								
24%	23%	R5	27%	25%	R6	29%	39%	R2

Alfred J. Cade, Senior Vice President for Governmental Relations, has been employed by Caesars for ten years. He discussed Caesars commitment to equal opportunity employment and affirmative action. He traced the history of its efforts since 1979. He also discussed Caesars' role with the Casino Redevelopment Investment Authority and Caesars' direct investment project, the Regency.

FACTUAL AND LEGAL DISCUSSION

I. Ungerer freely admits that on May 13, 1988, she reassigned employees solely on the basis of their sex or race. Her rationale for making the move was to avoid a possible confrontation with Libutti. She says she was told this by Rachel Bogatin.

Bogatin acknowledges that she told Ungerer to move the employees on May 13, 1988, on the advice of Niglio. Niglio denies that he told Bogatin to make the move. Niglio says he left for Philadelphia at 5:30 p.m. promptly that evening and has no recollection of talking to her about it. He recalled that he and Bogatin were in a meeting together from 4:00 p.m. to about 5:00 p.m., when Bogatin left. Niglio says he left the meeting at 5:15 p.m. and left for Philadelphia by 5:30 p.m. after passing through the casino. He recalled two or three conversations with others on his way out of the casino but recalled none with Bogatin. The log book and the testimony of Geiger appear to back up Niglio's alibi. But John Groom recalls telling Niglio about Libutti's supposed preferences at approximately 6:30 p.m. on May 13, 1988, when Niglio says he was in Philadelphia.

A curious inconsistency appears in Niglio's reliance upon the log book showing that he departed the casino at 5:30 p.m. on May 13, 1988. Niglio says he returned in the limo from the viewing to Caesars at about 10:00 or 10:30 p.m. that same night. But the log book indicates that the limo was only gone for two and a half hours. If so, Niglio would have returned to the casino at 8:00 p.m. if he left at 5:30 p.m. But if Niglio is correct that he returned at 10:00 or 10:30, then the limo must have left closer to 7:30 p.m., giving Niglio time to speak both to Bogatin and Groom just as they recall the events.

Another instance which supports Bogatin's version of an event as against others, concerns the May 7th transfer. On May 7, 1988, Maryanne Egeli and Catheryn Daidone were transferred by their pit boss Joseph Bochen. Joseph Bochen

said shift manager Rachel Bogatin told him to make the transfer. Rachel Bogatin denies she told Joe Bochen to do this. But Maryanne Egeli testified that shift manager Richard Slack was the one who told her she would be moved. This supports Bogatin's version of that event and her credibility generally.

Other testimony which casts doubt on Niglio's version of an event includes DeLuca's statement that as early as April 30, 1988, Niglio told him not to "crowd" a game played by Libutti in DeLuca's pit. But Niglio has insisted he did not know any of Libutti's supposed preferences until after May 13, 1988.

I believe that Niglio told Bogatin that she should transfer the black and female dealers. I believe that he did it in order to humor Libutti, a high roller.

Groom's description of Niglio and the reasons he recruited him away from Resorts, together with Niglio's own aggressive demeanor and obvious allegiance to the company strongly suggest that Niglio strives as hard as he can for a successful career at Caesars. He is interested in profits and will accommodate preferred customers to the best of his ability. In this case, I do not think he considered the rights or feelings of the transferred employees. Niglio was interested in one thing and in one thing only; how to attract and keep Libutti coming back to Caesars Nevertheless, he intentionally transferred the employees and that transfer was an act of discrimination. Furthermore, no one disputes that the conduct was an act of discrimination. Joel Respes, Deborah O'Kane and Pamela Jiacopello were told to stand aside for a white man. They might just as well have been directed to the back of the bus or to separate drinking fountains.

Nicholas Niglio is not a mere employee of Caesars, a peer of Respes, et al., he is a casino executive with access to the very top level of management. By regulation, he is invested with the authority to operate table games according to policies adopted by the casino's board of directors. N.J.A.C. 19:45-1.12 (a) 7, and 8. His acts bind the casino. This is a strictly regulated industry. N.J.S.A. 5:12-1b(6) and (13) state:

> (6) 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.
>
> (13) It is in the public interest that the institution of licensed casino establishments in New Jersey be strictly regulated and controlled ....
>
> In addition, N.J.S.A. 5:12-130g provides:
>
> It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself.

This language was cited and approved by the Appellate Division in Dept. of Law v. Boardwalk Regency, 277 N.J. Super. 549, 555 and 556 (1988). In that case, the court strictly construed the provisions of the Casino Control Act which regulated gambling by underage persons. In the instant case, the provisions of the Casino Control Act alleged to be violated, N.J.S.A. 5:12-134(b) is to be construed "consonant" with the N.J.L.A.D. N.J.S.A. 10:5-1 et seq. That statute elevates the opportunity to obtain employment to a "civil right." N.J.S.A. 10:5-4. It makes it unlawful for an employer to discriminate in "terms, conditions or privileges of employment." N.J.S.A. 10:5-12.

To insure that these objectives are accomplished, the Casino Control Act gave the Commission extensive power. In section 135 of the Act, it granted the Commission the authority "to impose such sanctions as may be necessary to accomplish the objective of section 134." One of the objectives of section 134 is to require casinos to "abide by" the affirmative-action program of equal opportunity it submits as a requirement of casino licensure. N.J.S.A. 5:12-134C. This is further required by N.J.A.C. 19:53-1.5(a), which extends the guarantees of nondiscrimination throughout the entire course of employment.

II. It is obvious that pit bosses and shift managers were aware that Libutti did not like anyone "hawking" his game as early as April 30, 1988. DeLuca, a pit boss,

reports that he was told this by Niglio on April 30, 1988. Johnson, a pit boss who relieved DeLuca, said that DeLuca told him not to stand next to Libutti's table. DeLuca and Ungerer both recalled that shift manager Richard Slack knew on April 30, 1988 that Libutti did not want to be closely watched while he played. Apparently some high rollers do not appreciate a crowd when they gamble and some do not appreciate a representative of management standing by the craps table or blackjack game, wringing their hands in dismay whenever the player is ahead.

Caesars has adopted a policy which prohibits its employees from exhibiting such behavior. Caesars has told its employees that there is no need for such behavior since the casino has adequate funds to pay off winners. It is a reasonable policy.

In this case, the Division alleges that Caesars and Rachel Bogatin, in their effort to humor Libutti, prohibited a pit boss from performing her duty to supervise a craps game by ordering her not to "watch" Libutti's play contrary to N.J.A.C. 19:45-1.2(a)(6). The regulation cited makes the pit boss the third level supervisor of the craps table in her pit.

The pit boss admits that she literally did not watch Libutti's play. She was, however, too unsure of what Bogatin actually told her to render either Bogatin or Caesars liable for an infraction of this regulation. Bogatin says she told Ungerer not to "stand on top of the game." Bogatin was a credible witness, Ungerer was not. Bogatin's instruction was not a direction to Ungerer to violate her duty as a pit boss and leave the craps table unsupervised. It was a reminder of Caesars' policy not to crowd the game; it was a legitimate deference to a high rollers preference for a little anonymity; it was an instruction to use tact and discretion.

FINDINGS AND CONCLUSIONS

I **FIND** that Nicholas Niglio intentionally discriminated against Joel Respes, Pamela Jiacopello and Deborah O'Kane on May 13, 1988, by reassigning them and replacing them with white male gaming employees so as to provide one Robert Libutti, a patron, with an all white male gaming staff.

I **FIND** that Rachel Bogatin intentionally discriminated against Joel Respes, Pamela Jiacopello and Deborah O'Kane on May 13, 1988, by reassigning them and

replacing them with white male gaming employees so as to provide Robert Libutti, a patron, with an all white male gaming staff.

I **FIND** that the Division has failed to prove by a preponderance of the credible evidence that Rachel Bogatin intentionally discriminated against Maryanne Egeli and/or Catherine Daidone on May 7, 1988.

I **FIND** that the Division has failed to prove by a preponderance of the credible evidence that Caesars and/or Rachel Bogatin instructed Carol Ungerer not to supervise the play of Robert Libutti on May 13, 1988.

I **CONCLUDE** that respondent Caesars is liable for the actions of Niglio and Bogatin on May 13, 1988.

I **CONCLUDE** that Caesars violated N.J.S.A. 5:12-134b and N.J.A.C. 19:53-1.5(a)2 on May 13, 1988.

PENALTY CONSIDERATION

In this case, the Division seeks the penalty of closure, and demands that Caesars pay full salary to its employees during the period of closure. At first blush, such a penalty seems reasonable.

Everyone knows that racism and sexism exist in the hearts and minds of many people. Racist and sexist jokes still travel well in our society. Racism and sexism are contemptible everywhere: when they are taught at home by word or deed, when they appear in social contacts, when they manifest themselves in the work place When they appear in the guise of policy in a State regulated industry they must be openly and publicly excoriated.

In this case however, Caesars has not adopted a policy which is either racist or sexist in its application to employees. In fact, it has adopted sound policies of affirmative action and equal employment opportunities. These are required by the Casino Control Commission. Caesars honestly attempts to implement them. Caesars appears to be doing as well as, or better than other casinos in attracting and promoting minorities and women.

Many of the Caesars executives who appeared to testify in this case were black, albeit male. Any cynics who might assert that the appearance of these witnesses was based on their skin color and not the relevance of their testimony must keep in mind that their appearance is the best evidence that Caesars is committed to equal employment opportunity. Additionally, recent statistical evidence indicates that women are achieving middle level promotions at a high rate. In the table games department, in which these incidents occurred, it is doing better than average. In fact, Nicholas Niglio, the person responsible for ordering the transfers of black and female dealers, is an important person in the selection and training of female and minority persons for promotion in the table games department.

The action taken here was intended primarily to gratify and seduce a very big customer of the casino. Caesars wanted this customer to return again and again. He was a very high roller. There are various legal ways that a casino can reward high rollers. Complimentary services and items is the traditional way in the casino industry and is approved by the Commissions' regulatory scheme. N.J.S.A. 5:12-14a and N.J.S.A. 19:45-1.9. Unfailing courtesy and attention is another way, but may not be reciprocated by some classes of bettors according to the testimony in this case. Apparently the rudeness of losing bettors is routine in the industry. It must be stressful to casino employees.

Pandering however, as occurred in this case, must always be discouraged. This transfer of black and female dealers was insensitive, bizarre and traumatic. Respes articulated his injury best when he said that he felt as though he had encountered a sign that read: "For Whites Only."

Egeli's response was also classic; "You learn not to say too much ... So I would like to keep my job ... So I didn't say anything." One learns to endure.

Caesars, as well as other casinos, must never lose sight of the fact that a significant factor in their creation is their contribution to the general welfare, health and prosperity of the State and its inhabitants. N.J.S.A. 5:12-1b(1). The provision of dignified employment opportunities to area residents is a large part of the bargain

A penalty must be exacted. In considering an appropriate sanction, seven factors must be considered pursuant to the Act. N.J.S.A. 5:12-130.

The conduct complained of created a risk to the public and to the integrity of gaming operations because it demoralized employees, disregarded law and regulation and exalted profits over common decency. If these actions became the standard by which all casinos operated, they would all be no better than disorderly houses.

The conduct complained of was a serious violation of N.J.S.A. 5:12-134c. Caesars did not abide by its guarantee of equal employment opportunity to all.

There was no justification for the conduct. In Caesars favor, no theory of justification or excuse was advanced, even though the testimony of some witnesses gave Caesars an opportunity to do so. Their defense of this case was handled in a sensitive and intelligent manner.

There is no indication that this action by Caesars was other than a singular and extraordinary action. Based upon the employment record of Caesars, it could not have been predicted. It surprised Caesars own management personnel. It never happened before, it has not happened since. It is best described as aberrant.

The corrective action taken by Caesars was not adequate. John Groom, Senior Vice President of Casino Operations, orally advised the shift manager, as soon as he heard about the incident, that no personnel would, in the future, be moved on account of sex or race. Groom also asked Niglio to so advise all shift managers and to have them instruct pit managers of the policy. Groom also made the decision to move a dealer for any reason a shift manager's decision rather than a pit manager's decision. He ordered an investigation. These actions were well taken. But they did not go far enough.

Throughout the hearing the Division elicited responses from witnesses that Caesars did not teach employees how to defend themselves from abusive patrons. The Division properly identified this failure as a problem which contributed to this incident. Caesars therefore, ought to study, adopt, promulgate and teach guidelines to all its employees which will assist the employee in handling the rude, unruly

obnoxious, demanding, drunken, racist or otherwise bigoted player. If a player is not satisfied with a polite, competent and honest dealer, the player should be moved, not the dealer. Casino's exist to provide decent employment to decent people as well as to provide a source of revenue to the State and to the shareholders.

There was no evidence adduced that Caesars could not afford a monetary penalty. All of the evidence suggested that Caesars was financially sound and an industry leader.

This violation was intentional, albeit uncharacteristic of the respondent. Therefore, the provisions of this section are inapplicable which provide that guilty knowledge is not required in order to find a violation.

An appropriate penalty is the payment of a fine by Caesars of $15,600., the amount of money lost by Libutti. In addition, Caesars shall include in its orientation program for all new employees, a segment dealing with methods to identify and control the abusive patron. This segment shall be presented to all Caesars' employees regardless of their longevity with the company. Prior to presentation to employees, it shall be approved by the Commission.

ORDER AND DISPOSITION

It is **ORDERED** that respondent Caesars shall pay a fine in the amount of $15,600. to the Commission upon receipt of an invoice for the same, and,

It is **FURTHER ORDERED** that Caesars prepare a teaching segment for all present employees which is to be incorporated into the orientation course for all new employees that deals with methods to identify and control abusive patrons after approval of the said plan by the Commission. The teaching segment shall be submitted to the Commission for approval within six months of the final decision in this matter.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 10, 1989
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

8/15/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 15 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBIT LIST

For the Petitioner:

P-1 Investigative Report of Division Agent William Frasco dated June 1, 1988
P-2 Sworn Interview of Carol Ungerer dated June 2, 1988
P-3 Sworn Interview of Rachel Bogatin dated June 3, 1988
P-4 Sworn Interview of Richard Slack dated June 6, 1988
P-5 Sworn Interview of Joseph Bochen dated June 22, 1988 (Not Admitted)
P-6 Sworn Interview of Nicholas Niglio dated June 3, 1988 (Not Admitted)
P-7 Sworn Interview of Joel Respes dated June 2, 1988 (Not Admitted)
P-8 Sworn Interview of Pamela Jiacopello dated June 2, 1988 (Not Admitted)
P-9 Sworn Interview of Roland H. Coleman dated June 6, 1988 (Not Admitted)
P-10 Sworn Interview of Deborah O'Kane dated June 2, 1988 (Not Admitted)
P-11 Memorandum from Roland H. Coleman to Howard Bacharach dated May 26, 1988
P-12 Sworn Interview of Lyndon Stockton dated June 3, 1988 (Not Admitted)
P-13 Sworn Interview of John Groom dated June 20, 1988
P-14 Sworn Interview of Mario DeLuca dated June 6, 1988 (Not Admitted)
P-15 Sworn Interview of Maryann Egeli dated June 22, 1988 (Not Admitted)
P-16 Sworn Interview of Catherine Daidone dated June 22, 1988 (Not Admitted)
P-17 CCC Reports of the Division of Affirmative Action and Planning for BRC dated September 2, 1986
P-18 CCC Reports of the Division of Affirmative Action and Planning for BRC dated September 15, 1987
P-19 CCC Reports of the Division of Affirmative Action and Planning for BRC dated September 12, 1988
P-20 Affirmative Action Plan for BRC
P-21 IMO BRC transcript October 5, 1987pages 22 through 26

For the Respondent BRC:

BRC-1 Upward Mobility Program Nominations dated March 30, 1987
BRC-2 Upward Mobility Program Class Schedule
BRC-3 Upward Mobility Program Precis

BRC-4 Management Team Agreement
BRC-5 1988 Upward Mobility Recommendations
BRC-6 Supervisory Skills Training Program
BRC-7a,b,c Limousine Log
BRC-8 Niglio to Quo May 3, 1988
BRC-9 Niglio to Pena May 3, 1988
BRC-10 Niglio to McGarry May 3, 1988
BRC-11 Report on Affirmative Action and Planning by CCC (Not Admitted)
BRC-11a Report on Affirmative Action and Planning by CCC Table 6 1989
BRC-12a Report on Affirmative Action and Planning by CCC Table 6 1988
BRC-13a Report on Affirmative Action and Planning by CCC Table 6 1987

WITNESS LIST

For Petitioner:

William Frasco
Lyndon Stockton
Mario DeLuca
Mary Ann Egeli
Catherine Daidone
Joseph Bochen
Joel Respes
Deborah O'Kane
Pamela Jiacopello
Craig Isaia
Carol Ungerer
Rachel Bogatin

For Respondent BRC:

Jeffrey R. Johnson
Eric Reynolds
John Groom
Jack Miller
Dan Geiger

Nicholas Niglio
Roland Coleman
Alfred Cade

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-371
REGISTRATION NO. 078406-40
OAL DOCKET NO. CCC 02999-90
ORDER NO. 90-46-6

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

Complainant,

ORDER

v.

JOHN BOJAZI,

Respondent.

A hearing 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 November 21, 1990,

IT IS on this 6th day of December 1990, ORDERED that the initial decision is modified to correct the reference at page five to "licensure" which should properly read "registration;" and

IT IS FURTHER ORDERED that the casino hotel employee registration of John Bojazi shall not be revoked substantially for the reasons stated in the initial decision which, as modified above, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2999-90
AGENCY DKT. NO. 90-371

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
JOHN BOJAZI,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

John Bojazi, respondent, pro se

Record Closed: **September 6, 1990** Decided: October 9, 1990

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

This matter concerns the complaint filed with the Casino Control Commission (Commission) on March 16, 1990, seeking revocation of the respondent's casino hotel employee registration. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on April 19, 1990, 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 11, 1990, and at that time the parties agreed that the issue in this matter is whether the respondent's continued registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2), because he is alleged to have committed a violation of N.J.S.A. 2C:20-3 (theft).

The hearing took place on September 6, 1990, at the Office of Administrative Law in Atlantic City, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

I FIND that the facts in this matter are not in dispute.

Mr. Bojazi, while employed as a food server at the Trop World Casino and Entertainment Resort (Trop World) stole two chicken halves, having a value of $19.00 from the Trop World Carousel Restaurant on October 6, 1989 (P-1).

During the investigation by the petitoner, the Division of Gaming Enforcement (Division), Mr. Bojazi admitted that he took the two chicken halves, and that he pled guilty to a violation of N.J.S.A. 2C:20-3 (P-2). He was fined $25, was assessed $25 in court costs and paid $30 to the Violent Crimes Compensation Board (P-1). Mr. Bojazi paid the $80.

According to Mr. Bojazi, he had worked for Trop World for three years. Mr. Bojazi stated that the Carousel Restaurant has a computer system for the placement of orders and the bills for the food are given to the customer. The food server does not handle any money and the customer has to pay the cashier. On October 6, 1989, the computer was down and the food servers had to handwrite the orders. Mr. Bojazi wrote a fictitious order for two chicken halves, received the cooked food from the kitchen, packed it up and was caught when he attempted to take the food home with him at the end of his shift. Mr. Bojazi was stopped by the security guard and he admitted that he had the two chicken halves. According to the respondent, this was the first and only time he tried to take food from the casino and he could offer no explanation as to why he did it. Mr. Bojazi lost his job at Trop World on October 6, 1989.

Prior to working at Trop World, Mr. Bojazi had a job as a counter server at Resorts International Casino Hotel (Resorts). He left this job for a better position

with Trop World. After the October 6, 1989 incident, Mr. Bojazi was able to get a job with Resorts. According to the respondent, he told Resorts about the October 6, 1989 incident and he was hired since he had been a good employee when he worked for Resorts. Mr. Bojazi is now employed as a food server at the Celebrity Deli at Resorts. At the Celebrity Deli, the food servers not only serve the food, but also takes care of the customers' bills with the cashier. The food servers are responsible for the payment of all food receipts.

Mr. Bojazi stated that he is 35 years old, divorced with no dependents. He completed the tenth grade in school. Mr. Bojazi has worked in the casino industry for approximately four years, and prior to that time, he worked as a waiter at other restaurants for about six years. Mr. Bojazi stated that the October 1989 incident has had had a tremendous effect on him, that he learned his lesson, and that he would never steal again. Mr. Bojazi stated that he has always been a good, reliable and honesty employee and described the October 6, 1989 incident as a dumb and terrible mistake. At the time of the incident, Mr. Bojazi had no financial problems and no reason to take the chicken halves. Trop World has a cafeteria with free food for its employees. Mr. Bojazi stated that after he lost his job at Trop World, he was concerned about his registration since casinos offer the best employment in the Atlantic City area. He was also afraid that he could not get a non-casino job.

Joseph K. Grzesowiak, the respondent's roommate for sixteen years, testified on his behalf. Mr. Grzesowiak has worked for Resorts for three years, as a restaurant greeter. According to Mr. Grzesowiak, Mr. Bojazi is a good and honest person who gets along with everyone. Mr. Grzesowiak stated that when Mr. Bojazi returned to their apartment on October 6, 1989, he was very upset, was crying, and was very concerned about whether he could get another job.

Mr. Bojazi ~~offered~~ introduced into evidence an official notice of outstanding performance that he received on May 6, 1990 from Resorts (R-2). This notice indicates that Mr. Bojazi has provided excellent service to the customers at the Celebrity Deli. In addition, Mr. Bojazi submitted a letter from Edward E. Menzer, the manager of the Celebrity Deli (R-1). In this letter, Mr. Menzer stated that it is Resorts' policy only to verify employment; however, he stated that the respondent has his personal recommendation since he is an amicable employee, who has an excellent rapport with his supervisors and coworkers, and who provides excellent service to the customers. According to Mr. Menzer, he has never had any reason to question the respondent's honesty.

On behalf of the Division, Deputy Attorney General Ralph L. Fusco stated that the respondent had admitted the theft, and the question was whether the respondent had presented enough evidence to outweigh the seriousness of the offense in order to show that his continued registration would not be inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2).

CONCLUSIONS OF LAW

The only issue in this matter is whether the respondent's criminal activity renders his continued registration inimical to the policy of the Casino Control Act. In order to make this determination, it is necessary to consider the circumstances surrounding the criminal offense as well as the respondent's prior and subsequent conduct, i.e., his rehabilitation. Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985). In order to make a determination relating to inimicality, it is appropriate to consider the following criteria set forth for rehabilitation in N.J.S.A. 5:12-91d:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

Mr. Bojazi has no criminal record except for the 1989 incident, and he has an excellent work record as a food server. The October 6, 1989 incident was an isolated offense. In the approximate one year period since this incident, Mr. Bojazi has not

changed his life style; however, he has been able to get another position as a food server in the casino industry.

The October 6, 1989 incident occurred in a casino facility and showed very poor judgment by the respondent, who was a mature person when the offense occurred However, Mr. Bojazi presented convincing testimony that he would not consider such criminal action in the future. Based on the facts presented, I **CONCLUDE** that Mr. Bojazi has show rehabilitation and that his continued licensure would not be inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2).

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

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 9, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

10/10/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Complaint filed against John Bojazi and the disposition as to the complaint

For the Respondent:

R-1 Letter from Edward E. Menzer

R-2 Official Notice of Outstanding Performance given to the respondent by Resorts International Hotel, Inc.

WITNESSES:

For the Petitioner:

John Bojazi

For the Respondent:

John Bojazi
Joseph K. Grzesowiak

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-156
APPLICATION NO. 079953-22
OAL DOCKET NO. CCC 09351-89
ORDER NO. 90-43-10

APPLICATION OF VANESSA R. BONAPARTE
FOR A CASINO EMPLOYEE LICENSE

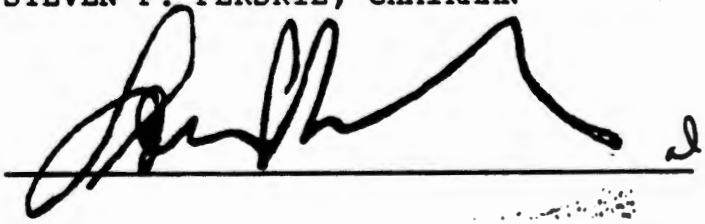
ORDER

A hearing 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 October 31, 1990,

IT IS on this 1st day of November 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9351-89
AGENCY DKT. NO. 90-EA-156

VANESSA R. BONAPARTE
Petitioner,
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Vanessa R. Bonaparte, petitioner, pro se

Norma L. Stancil, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: September 5, 1990 Decided: September 20, 1990

BEFORE **JOHN R. TASSINI**, ALJ:

STATEMENT OF THE CASE

The petitioner has applied for a casino employee license so that she may work as a secretary in a licensed casino. The Division of Gaming Enforcement ("Division") recommended denial of the application based upon its allegation that the petitioner committed the offense of theft, a disqualifying offense, and that therefore she lacks good character, honesty and integrity. See, N.J.S.A. 5:12-86c(1); N.J.S.A. 5:12-86g; N.J.S.A. 5:12-89b(2); and N.J.S.A. 5:12-90b and h

PROCEDURAL HISTORY

The petitioner applied for a casino employee license and, by letter dated October 13, 1989, the Division recommended denial of the application. By her hearing request form dated November 21, 1989, the petitioner requested a hearing on the matter. By letter dated November 29, 1989, the Division transmitted the matter to the Office of Administrative Law ("OAL") where, on December 6, 1989, it was filed as a contested case. See, N.J.S.A. 52:14B-1 et seq; N.J.S.A. 52:14F-1 et seq; and N.J.A.C. 1:1-1:1-3.1. On March 9, 1990, the matter was the subject of a prehearing conference before Administrative Law Judge Joseph Fidler, who thereafter entered a prehearing order. On August 24, 1990, I heard the matter in the City of Absecon Council Chambers. The record was kept open until September 5, 1990 to allow the Division to contact the persons whose letters were submitted by petitioner and to request an opportunity to present evidence in that regard, however, no such request was made, so the record was closed on September 5, 1990.

FACTUAL DISCUSSION

Based upon the testimony of the petitioner, who was a credible witness, and the exhibits indicated, I **FIND** the following **FACTS:**

Petitioner was born on February 5, 1967 in New York City, where she was raised and attended public school.

From about October 1986 until March 1987 the petitioner worked as a saleswoman in Bloomingdale's department store in New York City.

During the time that she worked at Bloomingdale's, petitioner lived at home with her parents, including her mother who had suffered several strokes and was ill with breast cancer and a brain tumor. The petitioner bore the burden of most of the care for her mother, including administering medicine to her, and during this time, she suffered great emotional stress. The petitioner then learned that her mother's brain tumor was cancerous.

The day after the petitioner learned her mother's brain tumor was cancerous, she went to work and sold a lamp for approximately $1,000 cash. The petitioner prepared a sales slip showing the item sold, price, etc., however, she kept the cash rather than depositiong it in the cash register. This was an irrational act since, given the record of the sale which the petitioner had made, her failure to turn in the cash would certainly be discovered. The petitioner spent some of the cash and reported for work the next day as scheduled. The New York City police were called in to investigate; the petitioner immediately admitted taking the cash; the petitioner turned in the cash she still had; and the petitioner was terminated from her job at Bloomingdales. Following completion of their investigation, the New York City police brought no charge against petitioner and no public complaint of any kind was made relative to the incident.

When asked during the hearing why she kept the cash or whether she expected to "get away" with it, the petitioner stated that she could only guess that she had cracked under the pressure relating to her mother's illness and she stated that she did not really see how she could not have been discovered.

The petitioner credibly testified that she has never had any charges of wrongdoing other than this incident, credibly acknowledged that taking the sales cash was wrong, and credibly testified that she would never make such a mistake again.

Following her departure from Bloomingdale's, the petitioner worked for a church and in offices, including a law office; she completed training in the use of office machinery; and her mother entered Beth Abraham Hospital in New York City, where she remains.

About 1989, the petitioner came to New Jersey and obtained work in the casino industry as a "casino scheduling clerk" at the Trump Castle Hotel and Casino. In this position, the petitioner's duties include making and maintaining records relating to personnel, scheduling, salary and medical insurance and she "loves" her job. It is significant that the petitioner handles no cash as part of her duties. The petitioner is very well regarded by her fellow employees who have described her as "very reliable," an employee who has "good job knowledge and does

an excellent job"; an employee who "gets along well with everyone"; an employee "with great character and good spirit"; and " the type of person you can depend on with anything." See, P-1, P-2, P-3, P-4 and P-5. The petitioner now resides in an apartment in Atlantic City.

Having observed the petitioner and having considered her testimony and the exhibits admitted into the record, I specifically **FIND** that there is clear and convincing evidence that the petitioner is a person of good character, honesty and integrity who has been rehabilitated relative to the above- noted incident.

LEGAL DISCUSSION AND CONCLUSIONS

Pursuant to the Casino Control Act, no person may commence employment as a casino employee unless he is the holder of a valid casino employee license. See, N.J.S.A. 5:12-90.

An applicant for a license must submit "information, documentation and assurances as may be required" to establish her qualifications and her "good character, honesty and integrity." See, N.J.S.A. 5:12-90b and N.j.S.A. 5:12-896(2).

A casino license may be denied to an applicant who is disqualified on the basis of criteria including commission of an act which would constitute, e.g., theft of the second or third degree in violation of N.J.S.A. 2C:20-1 et seq., even if such conduct has not been and may not be prosecuted under the criminal laws of New Jersey. See, N.J.S.A. 5:12-90e and N.J.S.A. 5:12-86g.

Here there is no dispute that the petitioner committed an act which constitutes theft of the 3rd degree. However, no applicant may be denied a casino employee license on the basis of commission of an act which would constitute, e.g., theft of the second or third degree, provided the applicant has affirmatively demonstrated her rehabilitation, and determination of rehabilitation shall be by consideration of 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 recommendations of persons who have or have had the applicant under their supervision. [N.J.S.A. 5:12-90h.]

Relative to the above factors I **CONCLUDE** as follows: Petitioner's position is substantially that of a record maker and record keeper, i.e., she handles no cash. The offense occurred during a period of great emotional stress, caused by news relative to the petitioner's mother's serious illness, the petitioner residing in her parent's home and the petitioners responsibility for care of her mother. These are circumstances which no longer exist. Also, the fact that police investigated petitioner's "offense" and declined to prosecute substantiates its status as only an isolated occurrence and it is unlikely that the petitioner will repeat such an act. The offense occurred over three years ago. Petitioner was approximately 20 years old at the time of the offense. The petitioner has for the past year and a half earned substantial respect for her character and employment performance, such that her fellow workers and superiors have recommended her as qualified for approval of her application. More specifically, I **CONCLUDE** that the petitioner has affirmatively demonstrated by clear and convincing evidence her rehabilitation and her good character, honesty and integrity within the meaning of relevant laws, such that she should not be considered disqualified and she should be granted a casino employee license.

ORDER

I **ORDER** petitioner's application for a casino employee license **GRANTED**.

This recommended decision may be adopted, 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.

9/20/90
DATE

John R Tassini
JOHN R. TASSINI, ALJ

Receipt Acknowledged:

9-20-90
DATE

Dolores Dest
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 24 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

Petitioner's Exhibits:

P-1 Letter of Alice Paris, dated August 23, 1990

P-2 Letter of Linda R. Borders, dated August 21, 1990

P-3 Letter of Adrian Moss, dated August 22, 1990

P-4 Letter of Linda Rivera, dated August 22, 1990

P-5 Letter of Gale White, dated August 23, 1990

Respondent's Exhibits:

NJ-1 Personal History Disclosure Form, completed by petitioner on December 13, 1988

WITNESS

Vanessa R. Bonaparte

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-257
LICENSE NO. 054485-21
OAL DOCKET NO. CCC 01968-90
ORDER NO. 90-48-6

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF CHRISTIAN D. BOSQUEZ

ORDER

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of December 5, 1990,

IT IS on this 7th day of December 1990, ORDERED that the initial decision is modified as follows:

> Reject the ALJ's comments at p. 7 of the initial decision wherein he incorrectly states that section 86(b) sets forth two separate offenses. The ALJ's statements are inaccurate. In fact, section 86(b) sets forth three circumstances whereby an individual may be found disqualified: (1) failure to provide information required by the Act or requested by the Commission; (2) failure to reveal any fact material to qualification; and (3) the supplying of information which is untrue or misleading as to a material fact.

ORDER NO. 90-48-6

IT IS FURTHER ORDERED that the renewal application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that Christian D. Bosquez is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC-01968-90
AGENCY DKT. NO. 90-EA-257

CHRISTIAN D. BOSQUEZ,

Petitioner,

vs.

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

Respondent.

JERRY C. GOLDHAGEN, ESQUIRE, attorney for petitioner

JAMES J. ARMSTRONG, Deputy Attorney General for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: SEPTEMER 25, 1990 Decided: OCTOBER 10, 1990

OAL DKT. NO. CCC-01968-90

BEFORE **JOSEPH E. KANE**, ALJ:

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) objecting to the renewal of the casino employee license #054485-21 issued to Christian D. Bosquez, petitioner. The Division alleges, among other things, that petitioner with specific reference to his record of arrests, failed to reveal facts material to qualification and/or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria for his casino employee license within the meaning of Section 86b and/or 90e of the Act and that petitioner does not possess the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2).

PROCEDURAL HISTORY

The Division filed its objection with the Commission by letter dated January 29, 1990. Petitioner requested a hearing on March 7, 1990 and on March 9, 1990 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on June 19, 1990 by Joseph E. Kane, ALJ followed by a hearing which was held

on August 27, 1990. The record was closed on September 25, 1990.

ISSUES

A. 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 material facts pertaining to the qualification criteria for his casino employee license within the meaning of section 86(b) and/or 90(e).

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimony and documents proffered at the hearing, the following are hereby adopted as **FINDINGS OF FACT** in this matter.

Petitioner is a 25 year old single male who commenced his career in the casino industry in 1983 as a hotel registrant in the position of room service attendant at Bally's Park Place Hotel Casino. Petitioner's salary could not support his efforts to obtain a degree in fashion design from the Tracy Warner School in Philadelphia, Pennsylvania. Unable to find employment while attending school, petitioner was prevented from completing his degree. He returned to the Atlantic City area in 1984

where he commenced employment as a pit clerk at the Claridge. He has worked in various casinos including TropWorld and Trump Castle where he started out as pit clerk and now holds the position of a blackjack dealer.

As part of petitioner's license renewal investigation, Agent David P. Cooke sent petitioner a "ten day letter" which requests that petitioner contact the Division of Gaming Enforcement in order that a personal interview could be conducted. On August 26, 1987 the petitioner had completed his Employee License Renewal Application. On August 17, 1989 Agent Cooke conducted a telephone interview with petitioner at which time he reviewed petitioner's answer to question number 6 and 7 on page 2 of the renewal application form. Question number 6 states:

> "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?"

To this question, petitioner answered "no". Question number 7 states:

> "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 initially licensed or since your last license renewal?"

Petitioner also answered this question in the negative.

Question number 6 and 7 were incorrectly answered since petitioner had been arrested on two previous occasions. On June 7, 1986 petitioner was arrested by the Atlantic City Police Department and charged with possession of a controlled dangerous substance (marijuana). On April 5, 1987 petitioner was again arrested by the Atlantic City Police Department and charged with possession of a prohibited weapon (knife) and possession of marijuana under 25 grams. This matter was dismissed on August 5, 1987.

Agent Cooke specifically remembers petitioner's interview since it was the first time that an applicant when confronted with question number 6 and 7 the applicant repeatedly denied having any involvement with the criminal justice system. Agent Cooke testified that it is normal procedure to first discuss employment related issues, then financial matters, and finally any matters dealing with criminal arrests or convictions. An applicant's criminal record is discussed last since in general, this is the portion of the interview which is the most time consuming and often the most aggravating for the applicant. Agent Cooke read question 6 and 7 to the petitioner and asked him if he understood the question at least four times before petitioner relented and agreed that he had been arrested. Agent Cooke recalled that he was virtually begging the petitioner to admit to the arrest after reading the question one or two times and was not able to obtain a confirmation of the arrest record until he advised petitioner that he had an FBI rap sheet.

Petitioner's testimony was in sharp contrast to that of

Agent Cooke. His recollection of the interview was that Agent Cooke did not identify who he was, began to shout and argue with him and immediately began an inquiry as to his criminal history background. Petitioner claims that he only answered Agent Cooke's questions after he was able to ascertain Agent Cooke's position, who he represented and the nature of his call.

Petitioner testified that he fully understood questions 6 and 7 on the renewal application and answered in the negative because he felt that the June 1986 and April 1987 matters had been dismissed and was thus not relevant. Petitioner claimed that at that time, he was only a recreational user of marijuana. He stated that in June of 1986 he was only holding three pouches of marijuana for a friend and that in April of 1987, without his consent or knowledge, a friend had placed marijuana in his duffle bag. Being afraid that these two arrests would impact adversly upon his relicensing petitioner intentionally answered questions number 6 and 7 in the negative.

A. **DID PETITIONER FAIL TO REVEAL ANY INFORMATION OR PROVIDE FALSE OR MISLEADING INFORMATION AS TO A MATERIAL FACT RELEVANT TO HIS RELICENSURE.**

Section 86b of the act makes the providing of false or misleading information or the failure to provide information which is material to relicensure a disqualifying offense.

> "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;"

The evidence is clear and unequivocal that petitioner intentionally failed to reveal information and provided false information to the Division when answering question number 6 and 7 on page 2 of the renewal application. His actions were intentional and deliberate especially when considered against the fact that the renewal application was completed by him on August 25, 1987 some 20 days after his last involvement with the criminal justice system. His conduct was deliberate and not committed out of ignorance since he testified that he understood and was aware of what information was required to be revealed by question number 6 and 7.

Section 86b sets forth two separate offenses which constitute a disqualifying offense. The first portion of the statute recognizes that it is an offense for an applicant not to supply information required by the commission.

> "The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission..."

The remaining portion makes it an offense not to supply any additionally requested information which is material to licensure. Failure to supply information on the renewal application falls

within the former category. In the instant matter, petitioner did not violate the first portion of section 86b through inadvertance or forgetfulness, but instead he deliberately intended to omit "information" required by the commission.

The case of Paul vs. Division of Gaming Enforcement, 2 N.J.A.R. 341 addressed the issue under 86b when an individual intentionally seeks to withhold information from a personal history disclosure form. There it was recognized that intentional omission rather than mere inadvertance constitutes a violation of 86b.

> "The legislature has seen fit to include in the Casino Control Act an express declaration of public policy. N.J.S.A. 5:12-1b(6) provides in part: 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".

Whether an individual has been arrested despite the fact that such arrests may have been unjustified or that a conviction was subsequently dismissed is material to the licensing criteria set forth in Section 86 of the act. Accordingly, I **FIND** that petitioner has committed a violation of Section 86b of the act by his intentional omission of the June 1986 and April 1987 arrests

from his renewal application. I **FURTHER FIND** that petitioner's continuing failure to provide information to Agent Cooke during the personal interview which occurred on August 17, 1989 also constitutes and compounds a violation of Section 86b of the act. For these reasons, I hereby **REVOKE** petitioner's casino employee license #054485-21.

B. DOES PETITIONER POSSESS THE REQUISITE GOOD CHARACTER, HONESTY AND INTEGRITY REQUIRED FOR CASINO EMPLOYEE LICENSURE PURSUANT TO N.J.S.A. 5:12-89b(2).

Whenever the Division of Gaming Enforcement raises as an issue the good character, honesty and integrity of the petitioner, it is then petitioner's burden to show by clear and convincing evidence that he possesses the requisite good character, honesty and integrity required for licensure under the Act. In accordance with the strict regulatory provisions intended by the legislature it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure. Clear and convincing falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here the trier of fact should have a firm belief that the facts presented by petitioner are true. The standard requires more than the mere balancing of probabilities but less than absolute certainty. A reasonable certainty is required. Lapre vs. Caputo, 133 N.J. Super. 118 (Law Div. 1974).

Petitioner presented no less than 15 statements in writing

and four witnesses attesting to his good character, honesty and integrity. Each of these witnesses considered petitioner to be a competent casino employee, good friend, considerate and honest individual despite their knowlege that petitioner had twice been arrested for marijuana, once for possession of a prohibited weapon and had intentionally lied on his renewal application. The Division did not draw into question petitioner's work record or ability to perform his job. In sum, the evidence presented on behalf of petitioner indicates that he is a hard working, industrious individual who is both a good and loyal friend and competent employee. To these attributes I agree, however, petitioner's intentional decision to omit vital and relevant information from his renewal application seriously draws into question whether he has demonstrated by clear and convincing evidence his good character, and most importantly, honesty and integrity.

When petitioner was completing the renewal application, the 1986 and 1987 involvement with the criminal justice system had not been forgotten. Petitioner made a deliberate and calculated decision to omit this information and then further exacerbated the charade by repeatedly denying any knowledge of them when questioned by Agent Cooke. Both these actions, the former more than the latter, impact dramatically on petitioner's affirmative duty to demonstrate by clear and convincing evidence that he possesses the requisite qualities set forth in Section 89b and 90e of the Act. Inadvertance or forgetfulness is excusable. Intentional conduct to violate Section 86b of the Act is not and accordingly, I **FIND** that petitioner has failed to

meet his burden placed upon him by Sections 89b and 90e of the Act.

For the reasons set forth above, **I HEREBY REVOKE** petitioner's casino employee license number 054485-21.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISION** for consideration.

10/11/90
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

10/17/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 23 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

OAL DKT. NO. CCC-01968-90

EXHIBITS

FOR PETITIONER:

P-1 Letter from Barbara Wilson dated March 24, 1990;
P-2 Letter from Avis L. Cole dated August 23, 1990;
P-3 Letter from Avis LeAnn Cole, undated;
P-4 Letter from Barbara A. Primavera dated February 20, 1990;
P-5 Letter from Joseph M. DeRosa dated March 2, 1990;
P-6 Letter from Carl R. Bell Jr., dated April 23, 1990;
P-7 Letter from Terri Weikel dated August 8, 1990;
P-8 Letter from Claudia Holmes dated May 23, 1990;
P-9 Letter from Margaret Miller dated May 23, 1990;
P-10 Letter from Sonya Crawford dated August 16, 1990;
P-11 Letter from Johnny Jackson dated August 8, 1990;
P-12 Letter from Laurie Ann Howard dated August 8, 1990;
P-13 Letter from Kenneth Cruz-Dilliard dated August 16, 1990;
P-14 Letter from Wayne L. Johnson dated August 21, 1990;
P-15 Letter from Richard P. Irven dated August 2, 1989;
P-16 Letter from Simone Ranere, undated;
P-17 Letter from Jerry Goldhagen, Esquire dated September 7, 1990;

FOR RESPONDENT:

R-1 Investigation Report of Agent David Cook dated August 23, 1989;
R-2 Atlantic City Police Department Investigation Report dated June 7, 1986;

R-3 Atlantic City Police Department Investigation Report dated April 5, 1987;
R-4 Employee License Renewal Application;
R-5 Brigantine Police Department Investigation Report dated April 8, 1990;
R-6 Brigantine Municipal Court complaint and summons dated April 8, 1990;
R-7 Letter from James J. Armstrong dated September 24, 1990;

WITNESSES

FOR PETITIONER:
Christian D. Bosquez
George Almeyda
Joanne Austin
Kenneth Cruz-Dillard
Jeff Mostrandrea

FOR RESPONDENT:
Agent David P. Cooke

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-186
APPLICATION NO. 077324-21
REGISTRATION NO. 014282-40
OAL DOCKET NO. CCC 09742-89
ORDER NO. 90-45-7

APPLICATION OF ROBERT J. BOSTIC, SR.
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 November 14, 1990,

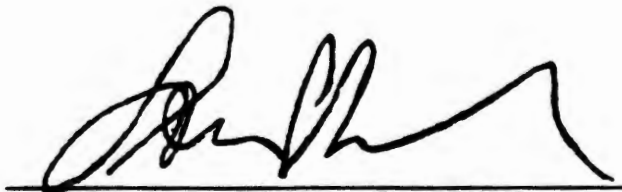
IT IS on this 3rd day of December 1990, ORDERED that the initial decision is adopted; and

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

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining 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 this denial shall not affect Robert J. Bostic, Sr.'s current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION



STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9742-89
AGENCY DKT. NO. 90-EA-186

ROBERT J. BOSTIC, SR.,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Robert J. Bostic, Sr., the petitioner, pro se

R. Lane Stebbins, Deputy Attorney General, for the respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: August 13, 1990 Decided: September 26, 1990

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

This matter concerns the November 14, 1989 letter filed by the respondent, the Division of Gaming Enforcement (Division), with the Casino Control Commission (Commission), objecting to the issuance of a casino employee license to the petitioner, Robert J. Bostic, Sr. The petitioner requested a hearing and the matter was transmitted on December 27, 1989, 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 telephone prehearing conference was held on April 26, 1990, at which time the parties agreed that the issues in this matter are:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: theft by deception (a third degree offense), a violation of N.J.S.A. 2C:20-4.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee license pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h.

The hearing took place on August 13, 1990, in the Absecon City Hall, Absecon, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** that there are no factual disputes in this matter.

The Division showed at the hearing that the petitioner has the following criminal record:

(1) On April 22, 1980, the petitioner was arrested by the Atlantic County Police Department and charged with receiving stolen property, a violation of N.J.S.A. 2C:20-7. The matter was dismissed on July 22, 1980. The petitioner stated that he was a passenger in a stolen automobile. Mr. Bostic revealed this arrest on his application form (R-1).

(2) On April 1, 1974, the petitioner was arrested by the Atlantic City Police Department and charged with assault, a violation analogous to N.J.S.A. 2C:12-1. He was convicted and sentenced to 10 days in jail, which was suspended. The petitioner stated that this incident was a domestic dispute between him and his wife. Mr. Bostic revealed this arrest and conviction in his application form (R-1).

Also during its investigation of the petitioner's application, the Division determined that:

(1) In March 1971, the petitioner received an overpayment in unemployment benefits in the amount of $590. The Division of Unemployment and Disability Insurance (UDI Division) represents that this amount was paid based on the fraudulent representations of the petitioner. The UDI Division has assessed a fine of $540 plus interest. The petitioner has repaid part of the amount he owes. According to the report from the UDI Division, he currently owes $614. (R-3). At the time of this incident, Mr. Bostic was employed by the Atlantic City Housing Authority.

(2) In January 1972, the petitioner received an overpayment in unemployment benefits in the amount of $1323. Of this amount, the UDI Division represents that $767 was paid to the petitioner based on fraudulent representations and $556 was paid in error (no fraud). The petitioner has repaid the amount of the fraudulent payment but has not paid the other amount. According to the report from the UDI Division, with interest the petitioner currently owes $869.73 (R-3). At the time of this incident, Mr. Bostic was employed by the Atlantic City Housing Authority.

(3) In February 1982, the petitioner received an overpayment in unemployment benefits in the amount of $1305. Of this amount, the UDI Division represents that $435 was paid to the petitioner based on fraudulent representations and $870 was paid in error (no fraud). According to the report from the UDI Division, the petitioner has repaid almost the entire amount of this debt and he currently owes $47.28 (R-3). At the time of this incident, Mr. Bostic was employed by the Claridge Hotel and Casino (Claridge).

At the hearing, Mr. Bostic stated that he has no recollection regarding the three times he received overpayments in unemployment benefits. Mr. Bostic did not deny that he received the overpayments and that he had repaid some of the monies he owed to the UDI Division; however, he had no recollection as to when these incidents occurred, where he was working at the time of the incidents, the circumstances surrounding the incidents, the arrangements for the repayments or how much he still owes the UDI Division.

Mr. Bostic stated that he probably stopped repaying the debt to the UDI Division because he needed the money to support his family. According to Mr. Bostic, he filed a petition for bankruptcy on April 5, 1989, because he could not pay his debts. Mr. Bostic thought that his debt to the UDI Division may had been

dismissed as part of the bankruptcy proceeding. Agent Patrick B. Hickey, the Division's investigator, stated that he had checked into the matter and that the debt owed to the UDI Division had not been discharged during the bankruptcy proceedings. Mr. Hickey stated that he was informed by the UDI Division that the petitioner owes about $700.

On his own behalf, Mr. Bostic stated that he is 37 years old and that he completed the ninth grade. Through the manpower training program, Mr. Bostic took a course in maintenance and repair in 1974.

Mr. Bostic got married when he was 16 years old and he has been divorced for 15 years. Currently, Mr. Bostic helps to support his five children and six grandchildren.

Mr. Bostic has held a number of positions. He was a security guard at the Steel Pier in Atlantic City for three years, a security guard for a detective agency for three years and a security guard for the Atlantic City Housing Authority for two years. Also, he was a gas attendant for two years, and he worked for three years as a truck driver for a bakery.

In 1981, Mr. Bostic obtained a casino hotel registration. Mr. Bostic worked for the Bally's Park Place Hotel and Casino as a cook from 1980 to May 1982, and he was fired because he was absent too many times. Mr. Bostic then got a position as a cook for the Claridge and he quit the job after about one month because he did not like his hours of work. Since June 1982, Mr. Bostic has been employed by TropWorld Casino and Entertainment Resort as a cook. Also in the past, Mr. Bostic was employed for a while by Resorts International Casino and Hotel in a housekeeping position, but he resigned to get a better position.

According to Mr. Bostic, he applied for the casino employee license since he wants to get a better position in the casino industry.

CONCLUSIONS OF LAW

Based on the facts presented, Deputy Attorney General R. Lane Stebbins argued that the petitioner fraudulently obtained unemployment benefits on three occasions. Since on two of these occasions the amount that was fraudulently received exceeded $500, Mr. Stebbins argued that the petitioner's conduct was

analogous to a criminal violation pursuant to N.J.S.A. 2C:20-4, theft by deception. Mr. Stebbins argued that these two incidents constitute statutory disqualifiers pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g, even though criminal charges were not filed against the petitioner. As to the third incident of the fraudulent receipt of unemployment benefits, Mr. Stebbins recognized that less than $500 was involved and therefore the incident did not constitute a statutory disqualifier. However, Mr. Stebbins stated that Mr. Bostic fraudulently obtained the money while he was a casino employee. Mr. Stebbins stated that recently the Commission adopted Administrative Law Judge Mason's initial decision holding that an applicant's casino employee license should not be renewed because he had fraudulently received unemployment benefits while employed by a casino, Thomas v. Division of Gaming Enforcement, OAL DKT. No. CCC 4401-89 (Feb. 7, 1990), adopted by Comm., March 23, 1990. In the Thomas case, Administrative Law Judge Jeff S. Masin stated that it "does not reflect well upon the casino industry or its employees for a licensed person to dip into the public till while at the same [time] reaping the rewards of casino employment" (Id. at 4).

Also as to rehabiliation, Mr. Stebbins recognized that the fraudulent unemployment compensation incidents occurred a substantial time ago, but he argued that there were three separate incidents of fraud and that the petitioner has not repaid the entire amount he owes to the UDI Division. Because of these facts, Mr. Stebbins argued that the petitioner has not shown rehabilitation by clear and convincing evidence. Further, Mr. Stebbins stated that the petitioner has not presented any support for his position that he is rehabilitated and that he is a person of good character, honesty and integrity. Mr. Stebbins argued that because of the three incidents of the receipt of fraudulent overpayments, the petitioner cannot demonstrate his good character, honesty and integrity as required for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

Mr. Bostic stressed that he wants the casino employee license so that he can get a better job. With such a job, Mr. Bostic stated that he could financially help his family and also repay the remainder that he owes to the UDI Division.

Based on the facts, I **CONCLUDE** that the Division has shown a statutory disqualification pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g. The Division has shown that based on the two fraudulent claims, the petitioner received

overpayments of unemployment benefits in 1971 and 1972 and these incidents constituted theft by deception, violations of N.J.S.A. 2C:20-4.

I have difficulty accepting petitioner's testimony that he cannot recall any of the circumstances regarding these overpayments. However, in view of his testimony, I **CONCLUDE** that there are no mitigating factors relating to the three fraudulent overpayments.

I recognize that the petitioner was a young man at the time of the first two fraudulent overpayments which constitute the statutory disqualifiers. However, he was about 29 years old when he received the latest fraudulent overpayments. Although the 1982 overpayment does not constitute a statutory disqualifier it is a significant factor in evaluating his rehabilitation especially since he was working for a casino at that time. Also, I recognize that the petitioner has made a substantial repayment of the debt to the UDI Division; however, he has not repaid the entire amount nor has he presented convincing reasons for the long delay in repaying the debt. Further, I note that the petitoner presented no witnesses at the hearing regarding his rehabilitation or as to his good character, honesty and integrity.

Based on these facts, I **CONCLUDE** that the petitioner has not shown by clear and convincing evidence his rehabilitation pursuant to N.J.S.A. 5:12-90h. Based on the same facts, I **CONCLUDE** that the petitioner has not shown by clear and convincing evidence his good character, honesty and integrity pursuant to N.J.S.A 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 26, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

9/28/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 2 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

cad

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

None

For the Respondent:

R-1 Personal History Disclosure Form - 2A filed by the petitioner

R-2 Certificate of Debt owed to the Division of Unemployment and Disability Insurance by the petitioner

R-3 Computer print out showing amount due to the Division of Unemployment and Disability Insurance

WITNESSES:

For the Petitioner:

Robert J. Bostic, Sr.

For the Respondent:

Patrick B. Hickey
Robert J. Bostic, Sr.

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-63
LICENSE NO. 58431-21
(REGISTRATION NO. 59767-40)
OAL DOCKET NO. CCC 06954-89
ORDER NO. 90-39-4

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF ANGELA E. BROWN

ORDER

A hearing 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 October 3, 1990,

IT IS on this 14th day of December 1990, ORDERED that the initial decision is modified as follows:

> To reject that portion of the initial decision, at page 3, wherein the ALJ commented that "[t]he worst that can be said of petitioner is that she was negligent or, if she had any larceny in her heart, that the amount in question was less than $500.... because she obviously did not steal $705 if she was entitled to partial benefits. There is insufficient evidence in the record to support this conclusion. While there is evidence that Brown received some benefits to which she was not entitled, there is no evidence that Brown obtained the money as a result of any purposeful conduct within the meaning of N.J.S.A. 2C:20-4. Absent such evidence, a

crucial element of the theft offense is lacking and, thus, no disqualification is established under N.J.S.A. 5:12-86(c)(1).

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6954-89

AGENCY DKT. NO. 90-EA-63

IN THE MATTER OF THE RENEWAL APPLICATION OF ANGELA BROWN

Angela Brown, petitioner, pro se

Norma Stancil, Deputy Attorney General, for respondent (**Robert J. Del Tufo**, Attorney General of New Jersey, attorney)

Record Closed: June 26, 1990 Decided: August 9, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

Angela Brown, petitioner, applied to the Casino Control Commission (Commission) for a renewal of her employee gaming license. The Division of Gaming Enforcement (Division) objected to the renewal by letter filed with the Commission on August 17, 1989. The petitioner requested a hearing and on September 15, 1989, the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on January 19, 1990 and the issues to be resolved at a plenary hearing were identified. It appeared that the petitioner had a judgment against her from the Division of Unemployment and Disability Insurance in the amount of $881.25. The Division of Gaming Enforcement equated this with theft by deception, and, pursuant to section 86g of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq., it presented the matter as unprosecuted criminal conduct.

Persons convicted of certain crimes are disqualified from casino employee licensure pursuant to section 86c(1) of the Act. Theft by deception in an amount over $500 is one such disqualifying crime.

A person can be saved from disqualification by affirmatively showing that she is rehabilitated. N.J.S.A. 5:12-90h. Casino employees must also demonstrate that they have good character, honesty and integrity. N.J.S.A. 5:12-89b(2). Therefore, the three issues listed in the prehearing order are whether or not the petitioner committed conduct equivalent to theft over $500., if so, whether the petitioner is rehabilitated, and whether or not the petitioner has the requisite good character, honesty and integrity for casino employee licensure.

The petitioner was first licensed by the Commission on June 12, 1985. In November of 1985, she was fired from the Tropicana and she applied for unemployment benefits. She was employed as a cashier by Pathmark on November 18, 1985, and she was employed as a cashier by Jamesway on November 21, 1985. She kept both jobs but was terminated from the Pathmark job a month later on December 20, 1985 because she was too slow. She said she did not pick up her first series of unemployment checks until after she was terminated from Pathmark. The Division could not refute her testimony. The petitioner reported her salary from Jamesway to the Division of Unemployment but may not have reported her salary from Pathmark to the Division of Unemployment.

A hearing examiner for the Division of Unemployment assumed that petitioner did not "properly" report her earnings to the Division of Unemployment because, after examining her record of unemployment benefits payments he concluded that she "either did not report her full earnings for the weeks in dispute or she did not make any effort in correcting over payments made..." (emphasis added). The hearing examiner determined that this was fraud.

The total amount of the petitioner's earnings from Pathmark was $160.42 During the same period however, the petitioner collected $705 in unemployment benefits. The difference between this amount and the judgment amount referred to above is the fine imposed by the Director of $176.25.

The hearing examiner in this case, as is apparently done in every case, concluded in the alternative because he did not know how the overpayment occurred. He did not know how the overpayment occurred because he did not have the relevant documents in front of him. The relevant documents, that is, the checks and underlying supporting documents for these transactions which the petitioner executed, were apparently in some archive. He therefore did not know whether the petitioner caused the overpayment by making a false statement, utterance or writing, or whether the mistake was caused by the Division of Unemployment. If the latter case, then the petitioner's fraudulent conduct, if any, was her failure to report checks issued to her in the wrong amount. This assumes that she knew the scale of benefits and was capable of the calculations required.

The hearing examiner obviously calculated the benefits paid against the amounts of earnings reported, noted the discrepancy and reported it as fraud. This is the policy of the Division of Unemployment. It may even be the law. It is a reasonable policy because persons ought not receive more unemployment benefits than to which they are entitled no matter whose mistake it is in the first place. It is even reasonable to demand the repayment of the entire amount of the benefit paid even if the petitioner was entitled, as may have been the case here, to a partial payment. But it is not reasonable to conclude, from all of the evidence received in this case, that the petitioner stole $705.

The worst that can be said of petitioner is that she was negligent or, if she had any larceny in her heart, that the amount in question was less than $500. This is so because she obviously did not steal $705 if she was entitled to partial benefits.

It would have been just as reasonable for the Division of Unemployment to adopt a policy which declared that only the amount received over and above the partial entitlement constituted the fraud and required repayment. The Division of Unemployment, just as reasonably, chose a stricter policy. But one should not acquire the status of a felon by reason of an administrative policy governing the recoupment of overpayments.

I **CONCLUDE** that the Division has failed to prove by a preponderance of the credible evidence that the petitioner committed acts which constitute the crime of theft in an amount over $500.

Nevertheless, the petitioner has repaid the sum due and owing to the Division of Unemployment. In addition, she has supplied evidence that her friends, co-workers and her landlord perceive her to be honest, hardworking and faithful.

Petitioner was only 22 years old when this event occurred five years ago. She has the responsibility of a child; she is a single parent. Her work record over the past three years has been steady; she has only changed employment in order to upgrade. She intends to go to college. She has no record of police contacts.

I therefore **CONCLUDE** that the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure.

The petitioner having committed no crime, the issue of rehabilitation is moot.

I **ORDER** that the letter objection to petitioner's renewal be **DENIED** and that the petitioner's casino employee license be **RENEWED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Aug 9, 1990
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

8/13/90
DATE

Kim Wood
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 15 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Angela E. Brown

For the Respondent:

None

EXHIBIT LIST

For the Petitioner:

P-1 Document on status of Angela E. Brown, from Supermarkets General Corporation
P-2 Computer Printout from the Division of Unemployment and Disability Insurance
P-3 Letter of Recommendation, dated May 23, 1990, from Joseph H. Previte
P-4 Notice of Satisfaction
P-5 Letter of Recommendation, dated June 9, 1990, from James B. Greene
P-6 Letter of Recommendation, dated June 1, 1990, from Carol Bunton
P-7 Letter of Recommendation, dated June 9, 1990, from Carlos Bonilla
P-8 Letter of Recommendation, dated May 25, 1990, from Douglas C. Knepper

For the Respondent:

R-1 Employer weekly wage report, from Supermarkets General Corporation
R-2 Employer Weekly Wage Report, from Jamesway Corporation
R-3 Division of Unemployment and Disability Insurance Refund Entry Report
R-4 Schedule of Overpayments
R-5 Letter, dated November 16, 1987, from the Division of Unemployment and Disability Insurance, with blank form and a statement of the law attached
R-6 Determination and demand for refund
R-7 Decision of appeal tribunal, dated March 29, 1988
R-8 Subsequent decision of appeal tribunal, dated June 28, 1988
R-9 Computer Printout
R-10 May 21, 1990 Printout

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-421
LICENSE NO. 050989-22
REGISTRATION NO. 037669-40
OAL DOCKET NO. CCC 04730-89
ORDER NO. 90-41-12

RENEWAL APPLICATION OF DONNA M. BURNETT — ORDER

A hearing 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 October 17, 1990,

IT IS on this 18th day of October 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application of Donna M. Burnett is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining 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 this denial shall not affect Donna M. Burnett's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

BY: Dennis Daly /pm
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4730-89
AGENCY DKT. NO. 89-EA-421

DONNA M. BURNETT,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Morton Feldman, Esq., for petitioner
Ralph Fusco, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: July 9, 1990 Decided: August 28, 1990

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In May 1989, the Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) objecting to the renewal of a non-gaming casino employee license to petitioner. The Division alleges, among other things, that petitioner committed offenses which automatically disqualifies her for licensure under section 86c(1) of the Casino Control Act (Act) and, that she failed to disclose her arrests as required by section 86b of the Act. The Division, therefore,

seeks an order issued by the Commission to deny petitioner's application for the renewal of her casino employee license. Petitioner requested a hearing and, thereafter, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq.

A prehearing conference was held on September 28, 1989, at which, among other things, the hearing date was established, the requirements for discovery were agreed upon and set forth and, petitioner was granted leave to propound her Motion to Dismiss for Failure to Provide a Speedy Trial on or before December 1, 1989. The hearing was held on January 16, 1990 and continued to July 3, 1990. The record closed on July 3, 1990, upon receipt of petitioner's documents.

ISSUES

The issues to be resolved by this administrative tribunal and as agreed to by the parties are these:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.A.C. 2C:20-3, Theft by Unlawful Taking in an amount which would render the offense a third degree crime?

B. Whether the petitioner, with specific reference to her record of arrests, has failed to reveal any facts material to qualification for her casino employee license within the meaning of section 86b and/or 90e?

C. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2)?

D. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act?

MOTIONS

Counsel for petitioner, Morton Feldman, Esq., propounded three (3) motions with respect to the instant matter: (1) Motion to Dismiss for Failure to Provide a Speedy Trial; (2) An application (oral) to invoke petitioner Burnett's privilege against self-incrimination as provided by the United States Constitution, Fifth

Amendment; and (3) An application to bifurcate these proceedings by allowing petitioner to testify as to her rehabilitation for alleged criminal activity, as provided by N.J.S.A. 5:12-90h, but, not requiring her to testify as to her criminal conduct (N.J.S.A. 5:12-86c(1)) pursuant to her Fifth Amendment privilege against self-incrimination.

MOTION TO DISMISS FOR FAILURE TO PROVIDE A SPEEDY TRIAL

Pursuant to the Prehearing Order, petitioner was required to file her application, with accompanying brief of law, on or before December 1, 1989, with regard to her Motion to Dismiss for Failure to Provide a Speedy Trial. The Motion was received by the undersigned on January 30, 1990 and the Deputy Attorney General on June 29, 1990, respectively, over two months and seven months late. It is noted here that Mr. Feldman's Certification of Service is neither dated nor signed by counsel, nor does it indicate a date it was mailed to Deputy Attorney General Fusco.

Mr. Feldman withdrew petitioner's Motion where, when asked by this tribunal as to the status of her Motion, Feldman responded, "Respectfully, your Honor, I didn't feel that the Motion could carry, and I decided not to put it in." (Tr. January 16, 1990, at p. 11, 1. 18-20).

MOTION TO BIFURCATE THE PROCEEDINGS

Mr. Feldman propounded on oral motion on behalf of petitioner to bifurcate these proceedings, as follows: (1) Mr. Feldman would permit petitioner to testify as to her rehabilitation factors, under N.J.S.A. 5:12-90h and to her qualities of good character, honesty and integrity, pursuant to section 89b(2) of the Act; (2) Mr. Feldman would then allow petitioner to invoke her Constitutional Fifth Amendment privilege against self-incrimination to avoid testifying concerning her alleged criminal activities.

Petitioner's Motion to bifurcate the proceedings was denied on the record.

CONSTITUTIONAL FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION (CURRENT N.J. RULES OF EVIDENCE, R. 23, R. 24)

Mr. Feldman objected to the Division calling his client, petitioner, to testify at these proceedings pursuant to N.J.S.A. 5:12-107a(5), and, therefore, invoked her privilege against self-incrimination. Although it was observed by the Division that this was an administrative matter, not criminal, petitioner's counsel insisted that his client was not compelled to give self-incriminating evidence. It was further observed that petitioner's cause to apprehend a criminal prosecution as a consequence of her testimony was rather weak and unpersuasive. Nonetheless, petitioner was granted leave to invoke the privilege.

Subsequently, petitioner was called by her attorney and testified on her own behalf. Thereafter, this tribunal spread on the record petitioner's right to invoke the privilege against self-incrimination together with petitioner's statutory obligation to meet the qualifications for licensure under the Act. Petitioner then agreed to testify and be cross-examined by the Division's Deputy Attorney General.

FINDINGS OF FACT

Based upon the testimony and documents proffered at the hearing, and having given fair weight thereto, I **FIND** the following **FACTS** in this matter:

Petitioner Donna Burnett presently is the holder a casino hotel employee registration and a non-gaming casino employee license. At the time of the hearing, petitioner was 26 years of age and single. Her original casino employee license was issued on March 21, 1984, with her renewal date of March 20, 1987. She is presently employed by the Trump Plaza Hotel and Casino as a cocktail server and has been so employed since May 1984.

On petitioner's original license application executed on December 15, 1983, question #16 asked whether the applicant had ever been arrested or charged with any felony, crime, misdemeanor, disorderly persons offense, etc. Petitioner answered "Yes," and asserted that she was arrested for trespassing in Egg Harbor Township, New Jersey, in 1976. The matter was subsequently dismissed.

In or about April 27, 1984, when petitioner was 20 years of age, she was arrested by the Margate, New Jersey, Police Department and charged with the

possession of drug paraphernalia, in violation of N.J.S.A. 24:21-47. This matter was subsequently dismissed by the Honorable Paul R. Porreca, J.S.C. on October 22, 1984.

Sometime in 1985, petitioner gave birth to a baby girl. The date of the infant's birth was not set forth on the record. On or about April 18, 1985, petitioner's infant daughter died from sudden infant death syndrome (SIDS), also referred to as "crib death." The putative father of the child was one Gary Young, who denied any responsibility for the child.

On June 10, 1985, Gary Young summoned the Margate City Police to investigate a theft of a 14k gold and diamond ring from his premises. Patrolman Peter Crook investigated the incident and reported that Young believed the theft had been committed by petitioner Donna Burnett. Young stated to Crook that Burnett had telephoned Young that morning and had threatened to kill him with a gun she possessed. Young further stated to Crook that Burnett had appeared at Young's place of employment (Resorts International Hotel and Casino) at approximately 9:00 a.m. and that Burnett had caused a scene (R-4).

Subsequently, on June 26, 1985, petitioner was placed under arrest by the Margate City Police on a charge of terroristic threats brought by Young. During the police interrogation of Burnett, the police advised her that she was a suspect regarding the burglary and theft at Young's residence. Detective Lt. Raymond F Welsh's investigation report states, in part, that:

> ... Donna Burnett ... admitted to breaking into Mr. Young's home, going through some of his possessions and finally taking a ring. Miss Burnett said that on that morning she had been drinking and that earlier in the day she had a confrontation with Mr. Young at his job. When Mr. Young threatened to summon security guards to have her removed Miss Burnett left, very angry. She then went to Margate to Mr. Young's home and made her entry through a window. Miss Burnett went on to say that what she had done was wrong, that a sober mind cannot justify what she did. She went on to say that since breaking up with Mr. Young her life has been a mess. She also said that she holds many ill feelings toward Mr. Young as a result of the baby and the events surrounding the baby and her death. Since the death she feels her life has fallen apart. Somehow, the burglary seemed like the only way to fight back at that particular moment. (R-5)

Miss Burnett went on to say that she wanted to return the ring ever since she took it but that she has been afraid to do so. She was afraid that Mr. Young would be very unforgiving and would have her arrested, which would result in her casino job being placed in jeopardy. Miss Burnett expressed a desire to undo the wrong she committed. She took the officers to her home in Atlantic City where she turned the ring over to them. Miss Burnett was then taken back to the police department in Margate where she was charged with burglary and theft and then processed and released (ROR) (R-5).

The ring, whose value was appraised as $1,590 on October 7, 1980, (R-6), was returned to Young by the Margate City Police. Subsequently, petitioner was indicted by the Atlantic County Grand Jury on two (2) counts; i.e., burglary and theft by unlawful taking (R-8). Petitioner applied for and was accepted into the Atlantic County Pretrial Intervention (PTI) program where she served 40 clock hours of community service with the Salvation Army. On June 6, 1986, the indictment was dismissed (R-8).

On November 25, 1986, petitioner completed the Employee License Renewal Application. Question #6 on the application asks the question:

> 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? (R-1).

Petitioner answered the question "No."

On March 21, 1989, petitioner was interviewed by the Division's Agent Karen Smolenski via telephone. Agent Smolenski's Supplementary Summary Report (R-10) asserts that petitioner admitted to a Driving While Intoxicated (DWI) charge in February 1987, however, she denied there were any other arrests. Petitioner continued to deny the earlier arrests even after Agent Smolenski explained that arrests should not be confused with convictions (R-10).

After further discussion with Agent Smolenski, petitioner became agitated, distraught and began crying. Petitioner admitted to the two arrests. Petitioner also stated to Agent Smolenski that petitioner did not disclose the two arrests on her Employee License Renewal Application because she was afraid of being fired. Petitioner also asserted that she had no education, no training and asked, where else was she to get a job (R-10).

DISCUSSION AND CONCLUSIONS

Disqualifying Offense Under N.J.S.A. 5:12-86c(1) as Incorporated in N.J.S.A. 5:12-86g

N.J.S.A. 5:12-1b(8) establishes that licensure and registration under the Act are revocable privileges which are "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation of or other sanction against the licensee 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 the petitioner's criminal misconduct constitutes a disqualifying offense under section 86c(1), and therefore, she cannot continue to hold a license.

Section 86c(1) of the Act mandates that a person who has been convicted of any offense in any jurisdiction which would be one of the enumerated offenses under the New Jersey Code of Criminal Justice shall be denied a casino license. Section 86g of the Act mandates that an applicant shall be denied a license even if the criminal offense had not or may not be prosecuted under the criminal laws of this State.

The Division has clearly shown that petitioner was arrested on June 26, 1985 where she was charged by the Margate City Police with burglary and theft. The record demonstrates that petitioner was brought before the Atlantic County Grand Jury which indicted her for burglary and theft by unlawful taking. The record also reflects that the subject of the theft, a 14k gold and diamond ring, was appraised in 1980 as having a retail value of $1,590. Under N.J.S.A. 2C:20-2b, grading of theft offenses, the statute states that theft constitutes a crime of the third degree if the amount involved exceeds $500 but is less than $75,000.

Notwithstanding that petitioner was not prosecuted for the offense, I **CONCLUDE** that under section 86g of the Act, the Division has met its burden of proof, by a preponderance of the credible evidence, that petitioner committed a disqualifying offense,pursuant to N.J.S.A. 5:12-86c(1).

Rehabilitation, pursuant to Section 90h of the Act

An applicant faced with the existence of one or more section 86c(1) disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating her rehabilitation as provided by section 90h of the Act. The factors which the Commission shall consider in determining the applicants rehabilitation are as follows:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

(1) Petitioner Burnett holds a non-gaming casino employee license and a casino hotel employee registration. She has been employed by Trump Plaza Hotel and Casino since May 1984 as a cocktail server. As such, she has direct and

substantial contact with casino patrons, although she has no responsibilities for actual gaming activities.

(2) The crime of theft in the third degree is a serious offense and, consequently, is listed as a disqualifying offense under section 86c(1) of the Act.

(3) The seriousness of petitioner's misconduct must be viewed in its appropriate context. Petitioner's credible explanation of the circumstances underlying the theft charge diminish significantly the seriousness of the offense. Petitioner had experienced a traumatic event by the death of her infant daughter occasioned by SIDS. The putative father, Gary Young, denied any obligation or responsibility for the infant and refused to discuss or communicate with the mother of the child. Petitioner, in either an act of frustration or revenge, broke into Young's home and removed some of his jewelry. Upon the advise of a girlfriend, petitioner returned all of the jewelry, except a ring which was dropped in her car, before it was missed. But for the ring dropped in her car, petitioner would, in all likelihood, not have been arrested or charged with burglary and theft.

(4) Petitioner entered Young's residence on or about June 10, 1985 when she removed and returned certain pieces of jewelry. Petitioner was placed under arrest on June 26, 1985 when she appeared at the Margate City Police Department and admitted to having Young's ring in her possession.

(5) and (6) Petitioner was 22 years of age when the offense was committed The conduct of burglary and theft was a single isolated incident.

(7) There were no social conditions which contributed to the offense.

(8) Petitioner has made substantial rehabilitative efforts. She has acknowledged her misconduct and was accepted into a PTI program which she successfully completed. She has earned a positive and respectable employment record with no suspensions or other disciplinary actions evidenced. Petitioner has the respect of her supervisor, colleagues, friends and coworkers as evidenced by their letters of recommendations for her continued licensure. There is a substantial basis upon which to conclude that petitioner does not present a risk to the casino

industry and that her rehabilitative efforts now, outweigh the seriousness of her misconduct.

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

Clear and convincing, as a standard of proof, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true. The standard requires more than mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (Law Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Failure to Disclose, Pursuant to Section 86b of the Act

Section 86 states that the Commission shall deny a casino license to any applicant who is disqualified on the basis of the following criteria:

> b. 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; . . .

Petitioner's counsel asserted that there was no contest as to petitioner's failure to reveal facts to the Division (TR. I, January 16, 1990, p. 10, l. 12-13). The record in this matter supports the Division's allegations that petitioner did fail to disclose facts material to her qualifications for licensure. As Judge Fidler, ALJ, observed in Paul v. Div. of Gaming Enforcement, 2 N.J.A.R. 341 (1979) at 345:

> **The Legislature has seen fit to include in the Casino Control Act an express declaration of public policy N.J.S.A. 5:12-1b(6) provides in part:**
>
> **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.

There is no statutory rehabilitation from the disqualification criteria pursuant to section 86, under section 90h of the Act. I **CONCLUDE**, therefore, that petitioner is disqualified from holding a non-gaming casino employee license to perform the duties of a cocktail server, based upon her failure to disclose facts material to her qualification for licensure, within the meaning of section 86b of the Act.

Good Character, Honesty and Integrity as Required by N.J.S.A. 5:12-89b(2)

Pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b of the Act, petitioner is required to affirmatively establish her good character, honesty and integrity, by clear and convincing evidence, for the renewal of her casino employee license. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the applicant's and/or licensee's good character, honesty and integrity, it is incumbent upon the applicant/licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra, In the Matter of the Application for Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the applicant/licensee be closely scrutinized and evaluated as to fitness for licensure.

The herein record clearly demonstrates that petitioner was not truthful when she completed the Employee License Renewal Application on November 25, 1986. She answered Question #6 falsely when she checkmarked the box labeled "No" which asked, among other things, whether she had been arrested since she had been initially licensed. Section 89b(2) of the Act specifically requires that:

> Each applicant for a casino key employee license shall produce such information, documentation and assurances

> as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. . . . (emphasis supplied)

Petitioner's failure to supply the required information concerning her arrests of April 27, 1984 and June 26, 1985 can not lead to a reasonable conclusion that petitioner possesses the requisite good character, honesty and integrity for licensure. Notwithstanding her apprehension of losing her job, petitioner was, nevertheless, compelled to answer the questions on the application honestly. When she failed to do so, it also raised questions about her good character and integrity, which the casino industry requires.

Considering all of the circumstances regarding this issue, I **CONCLUDE** that petitioner has failed to meet her burden of proof. I **CONCLUDE**, therefore, that petitioner has failed to demonstrate that she possesses the requisite good character, honesty and integrity, by clear and convincing evidence.

Having considered all of the issues in this matter, I **CONCLUDE** that petitioner is disqualified from continued licensure and that her application for the renewal of her non-gaming license is hereby **DENIED**.

ORDER

It is therefore **ORDERED** that the application of Donna Burnett for licensure as a non-gaming casino employee be **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION** who 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

28 August 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

8/30/90
DATE

Kim Works
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 31 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Donna M. Burnett

For the Respondent:

Donna M. Burnett

EXHIBIT LIST

For the Petitioner:

P-1 Letter by Beverage Supervisor
P-2 Letter by McTique
P-3 Letter by Michael Corleto
P-4 Letter by Florence Corleto
P-5 Letters by Deikey and Bingham
P-6 Letter by Martinez
P-7 Letter by Martin

For the Respondent:

R-1 PHD Renewal App. Form
R-2 Extrapolated portion of PHD App. Form
R-3 Statement of Truth dated 12-15-83
R-4 Incident Report dated 6-28-85
R-5 Supplemental Investigation Report
R-6 Appraisal of Jem Jewelers
R-7 Property Report dated 9-16-86
R-8 Indictment No. 85-08-1408B
R-9 Investigative Report, Lab Report, and Criminal Complaint
R-10 Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 90-EA-157; 90-317
APPLICATION NO. 081014-21
REGISTRATION NO. 096770-40
OAL DOCKET NOS. CCC 01817-90 AND
09545-89 (consolidated)
ORDER NO. 90-39-8

APPLICATION OF CRAIG M. CASSICK
FOR A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

v.

CRAIG M. CASSICK,

Respondent.

ORDER

A hearing 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 October 3, 1990,

IT IS on this 1st day of November 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Craig M. Cassick for a casino employee license is granted and his casino hotel employee registration is not revoked substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC- 01817-90

AGENCY DKT NO. 90-317

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

vs.

CRAIG M. CASSICK,
Respondent.

and

OAL DKT. NO. CCC-09545-89

AGENCY DKT. NO. 90-EA-157

CRAIG M. CASSICK,
Petitioner,

vs.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

CRAIG M. CASSICK, petitioner, pro se

JAMES J. ARMSTRONG, Deputy Attorney General for respondent

(Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: August 9, 1990 Decided: August 9, 1990

BEFORE **JOSEPH E. KANE, ALJ:**

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission on October 13, 1989 objecting to the issuance of petitioner's casino employee license. Additionally, on March 2, 1990 the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking revocation of petitioner's casino hotel employee registration #96770-40.

PROCEDURAL HISTORY

The Division alleges as to both the casino license and the hotel registration that petitioner committed acts which constitute a statutory disqualifier for licensure pursuant to N.J.S.A. 5:12-86(c)1 and that he lacks the requisite good character, honesty and integrity for licensure pursuant to N.J.S.A. 5:12-90(b) incorporating 89(b)2. Petitioner requested a hearing and the Commission transmitted the matters to the Office of Administrative Law (OAL) for determination as a contested case

pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on April 23, 1990 by Jeff S. Masin, ALJ. An Order was entered on May 17, 1990 requiring consolidation of the above captioned matters. A hearing was conducted as to both of these matters on July 19, 1990. The record was held open until August 9, 1990 to permit the petitioner additional time to submit evidence concerning his rehabilitation, good character, honesty and integrity.

ISSUES

The issues to be determined by this tribunal are as follows:

A. Has Mr. Cassick engaged in conduct which constitutes an automatic disqualification from licensure, pursuant to the provisions of N.J.S.A. 5:12-86(c)1? With respect to these matters, the Division relies upon the allegations contained in its complaint and the letter to the Casino Control Commission dated October 13, 1989.

B. If Mr. Cassick has engaged in disqualifying conduct, does the evidence presented establish that he has rehabilitated himself, as permitted by N.J.S.A. 5:12-90(h) and 91(d)?

C. In connection with the casino employee license application, does Mr. Cassick have the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-90(b) incorporating 89(b)2?

D. In connection with the casino hotel employee

registration, if Mr. Cassick is otherwise disqualified for registration, does the evidence and circumstances presented require that the disqualification be waived in the interests of justice and consistent with the public policy of the Act, as provided at N.J.S.A. 5:12-91(e)?

FINDINGS OF FACT

Based upon testimony and evidence presented during the hearing, the following facts are not in dispute and thus are herein adopted as **FINDINGS OF FACT** in this matter.

Petitioner is a 27 year old single male with no dependents. Prior to moving to the Atlantic City area he was a resident of Johnstown, Pennsylvania where he lived with his family. He had never been arrested or had any problems with the law prior to the evening of February 2, 1985. It was on that evening that his problems began.

Mr. Cassick, on the evening of February 2, 1985 was in a bar when a disturbance occurred as a result of a drink being spilled. Mr. Cassick pushed a gentlemen out of the way at the time the drink was spilling. This minor incident would later prove to be the catalyst for a more serious confrontation between Mr. Cassick and four other individuals. During the course of the evening, Mr. Cassick had approximately five drinks. Unbeknownst to him, four individuals had assembled outside the bar intending to engage him in a fight. Immediately upon opening the door to leave, he was confronted with two men on either side

of the door and two other men immediately in front of him. One of these men was rapidly advancing towards Mr. Cassick, butterfly knife in hand, apparently intending to even the score from the earlier altercation. These gentlemen were unaware that Mr. Cassick possessed a third degree black belt in ty kwon du. Within an instant, Mr. Cassick had acquired the weapon and turned it on his assailant. Despite the fact that the first assailant had been stabbed in the stomach, the other three continued to advance towards Mr. Cassick. In the altercation, a second assailant was stabbed which prompted the remaining men to flee the area. It was then that a police officer pushed Mr. Cassick against a wall in an attempt to subdue him. A scuffle ensued at which time Mr. Cassick attempted to strike the officer. He explained that he was trying to inform the officer that he was acting in self-defense, however, the officer continued to attempt to subdue him.

Mr. Cassick was asked whether considering his martial arts prowess it was necessary to inflict a stomach wound upon both assailants. He explained that he would have been placed in greater jeopardy had he thrown the knife on the ground since this would have again made the weapon available to be used against him. He reasoned that there simply was not time to place the weapon in his pocket and that his martial arts training dictated the evasive actions taken by him. As a result of the above captioned incident, Mr. Cassick was arrested on February 2, 1985 and charged with two counts of aggravated assault as a result of the stabbings, one count of resisting arrest and one count of

recklessly endangering the life of another individual by placing a knife to her throat. This latter charge was dropped on the grounds that it was a false accusation which was fabricated by a friend of one of the victims.

On July 11, 1985 Mr. Cassick pled guilty to one count of aggravated assault and one count of simple assault. He was ordered incarcerated for a period of 16 to 32 months in the County Prison. His incarceration began on October 22, 1985 and ended 16 months later. Mr. Cassick was 22 years old during this time period.

On September 27, 1985 Mr. Cassick was arrested in Pennsylvania and charged with conspiracy to distribute a controlled dangerous substance, cocaine. The investigation report indicated that Mr. Cassick and another individual conspired to sell cocaine (one gram) to an undercover police officer. Apparently Mr. Cassick was again in the wrong place at the wrong time. On September 27, 1985, he met a friend who stated that he needed a ride. Mr. Cassick obliged and took his friend to his destination. He stated that he had known this individual since they were ten years old and although he knew he used cocaine, he was not aware that he was a distributor or sellor of the drug. Mr. Cassick disavowed any knowledge of his friends mission and stated that while he waited in the car his friend stepped out and made the deal with the undercover police officer. When asked during the course of the hearing why he entered a plea of guilty he responded that it was his word against many others and he just did not feel that it was worth

fighting. On January 10, 1986 Mr. Cassick entered a plea of guilty to conspiracy to distribute a controlled dangerous substance and received a sentence of 6 to 23 months in the County Jail to run concurrently with his sentence for aggravated assault set forth above.

The Division of Gaming Enforcement alleges that Mr. Cassick's plea of guilty to one count of aggravated assault and one amended count of simple assault is comparable to N.J.S.A. 2C:12-1(b)(1) which states as follows:

> "A person is guilty of aggravated assault if he:
> (1) 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..."

The Division also alleges that Mr. Cassick's plea of guilty to one count of conspiracy to distribute a controlled dangerous substance is equivalent to N.J.S.A. 2C:5-2 which states:

> "A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:
> (1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
> (2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime...".

and N.J.S.A. 2C:35-5(a)(1) which states:

> "Except as authorized by P.L.1970, c.226(C.24:21-1 et seq.), it shall be unlawful for any person knowingly or

> purposely:
> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog...".

Based upon the facts set forth above, I **FIND** that Mr. Cassick's conviction for aggravated and simple assault entered in Pennsylvania on July 11, 1985 together with his conviction for conspiracy to distribute a controlled dangerous substance entered on January 10, 1986 are equivalent to the respective New Jersey State statutory cites set forth above and accordingly, constitute disqualifying offenses pursuant to Section 86(c)1 of the Act.

Pursuant to Section 5:12-(1)b(8) of the Act, it is established 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 sanctions against the license 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 has proven by a preponderance of the credible evidence that Mr. Cassick's conduct as set forth above does constitute a disqualifying offense pursuant to 86(c)1 of the Act. See State vs. Moore, 158 N.J. Super. 68 (App. Div. 1978).

Despite the fact that Mr. Cassick has committed an 86(c)1 violation, he may nevertheless retain his casino hotel employee registration and qualify for his casino employee license provided that he can demonstrate by clear and convincing evidence that he has rehabilitated himself. Mr. Cassick, pursuant to Section

91(d) of the Act need only demonstrate rehabilitation to preserve his hotel registration. In order to obtain his casino license, Mr. Cassick must show not only that he has been rehabilitated under Section 90(h) of the Act, but also that he possesses the requisite good character, honesty and integrity required of him pursuant to Section 89(b)2 of the Act. A showing of rehabilitation in and of itself is not sufficient to obtain a casino employee license.

The eight rehabilitative factors to be considered by this tribunal are identical in both sections 90(h) and 91(d). Accordingly, a finding of rehabilitation means that Mr. Cassick can retain his hotel registration but must overcome one more hurdle that of demonstrating his good character, honesty and integrity pursuant to Section 90(b) of the Act in order to obtain his casino employee license. The eight specific factors to be considered by this tribunal are:

1. The nature and duties of the position applied for;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the applicant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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.

Applying these eight factors, I **FIND** as follows:

1. Nature and duties of the position.

Mr. Cassick began employment on or about July 21, 1989 at the Sands Hotel Casino in the position of a hotel porter. Within three weeks he was promoted to bus greeter within the Day Tours Department. During this period, he has been well liked by his supervisors who uniformly agree that he has an excellent work record. (See R-2 thru 4). Mr. Cassick is entrusted with upwards of $10,000 of coin coupons per day which he distributes to the various casino patrons. Sands officials feel confident to entrust him with these vouchers and so indicated by letter dated July 7, 1990.

2. Seriousness of the offense.

I **FIND** that both offenses committed by Mr. Cassick in 1985 of conspiracy to distribute CDS and aggravated assault constitute serious offenses. As set forth in number 3 below, however, there are factors which mitigate slightly in his favor.

3. Circumstances surrounding the offense.

Just as the Bernard Getz case has been debated, the instant matter presents the question as to how much force is reasonable to defend oneself when presented with a potentially life-threatening situation. Considering that Mr. Cassick who was unarmed was accosted by four individuals, one of which was armed with a knife, the action taken by him may have been the only viable alternative. Mitigating in his favor is the fact that he

was apparently ambushed and did not instigate the altercation.

The second charge on the otherhand, Mr. Cassick appeared to be a more willing initial participant in that he willingly drove his friend to the site of a drug deal. He disavowed any knowledge of the consipiracy, however, I believe that a reasonable and prudent person would have, before driving a friend to a location, first inquired into the where and why before providing transportation.

4. Date of the offense.

Mr. Cassick was charged with aggravated assault on February 2, 1985 and pled guilty to said charge on July 11, 1985. He was charged with consipiracy to distribute CDS on September 27, 1985 and pled guilty to said charge on January 10, 1986.

5. Age at the time of the offense.

Mr. Cassick at the time of both above offenses was 22 years old.

6. Has the offense in question been repeated.

Mr. Cassick had never been involved with the criminal justice system prior to the two offenses which occurred in 1985 and has no other involvement since other than an arrest for DWI on his birthday in 1988.

7. Any social conditions which contributed to the offense.

Mr. Cassick attributed the two offenses in question to his age at the time (22) and the fact that he was living in a small town with high unemployment. Since removing himself from that environment, he feels that he is improving his life.

8. Evidence of rehabilitation occurring subsequent to the offense.

Mr. Cassick served 16 of a possible 32 month sentence commencing on October 22, 1985. As part of his sentence, the judge approved a work release program which commenced two months after he entered jail. He was employed at Will's Auto Sales performing general maintenance during the day and returning to the jail at night. There were no disciplinary problems with Mr. Cassick while incarcerated. Upon his release in February of 1986 he obtained employment with Jeff Graffius Construction as a roofer. He enjoyed a good work reputation with this latter employer.

CONCLUSION

When evaluating whether an individual is rehabilitated, two of the most important elements are whether the offense has been repeated and the time that has lapsed since the event. In this instance, both factors weigh heavily in favor or Mr. Cassick. Approximately five years have elapsed from the crimes which occurred in 1985 and he has been out of jail for over four years. Note must also be taken of the fact that he was approved for work release at the time of his sentencing for aggravated assault and thus it can be assumed that the court did not consider him to be prone to violence or otherwise a threat to the community. The court's evaluation was apprarently correct since he has not engaged in any such conduct since 1985. Given his age in 1985 that of 22 and considering that he was in all likelihood

acting in self-defense, and further considering that he has been and is now still gainfully employed and has achieved the respect of his supervisors, I **FIND** that Mr. Cassick has rehabilitated himself pursuant to Sections 91(d) and 90(h) of the Act.

Has Mr. Cassick demonstrated by clear and convincing evidence that he possesses the requisite good character, honesty and integrity required of a casino license holder pursuant to N.J.S.A. 5:12-89(b).

The letters submitted by Mr. Cassick's supervisors (R-2 thru 4) attest to Mr. Cassick's more than adequate abilities and willingness to perform his job. They speak of him as being prompt, trustworthy and honest. He is entrusted with large sums of coin redemption coupons on a daily basis and has never given his supervisors any cause for concern.

Obviously, in 1985 Mr. Cassick would have failed the Section 89(b) test, however, since then he has improved to the extent that his current supervisors find him to be hardworking, trustworthy and honest. The amount of time which has elapsed from the disqualifying offense together with the absence of any adverse information concerning Mr. Cassick is a factor which mitigates greatly in his favor.

Accordingly, for the reasons set forth above, I **FIND** that Mr. Cassick does possess the requisite good character, honesty and integrity required of a casino license holder pursuant to Section 89(b) of the Act.

Do the circumstances set forth above warrant the extraordinary relief of waiver being granted to Mr.

Cassick.

Section 91(e) of the Act permits the Casino Control Commission to grant a hotel registrant the right to be employed in the industry even if the registrant has been disqualified pursuant to Section 86(c)1 of the Act and has failed to demonstrate his or her rehabilitation by clear and convincing evidence pursuant to Section 91(d) of the Act. In order to obtain a waiver, the hotel registrant must demonstrate that despite a negative finding of rehabilitation, the interest of justice dictates that the registration should issue. Extraordinary circumstance must thus exist in order to obtain such relief.

In the instant matter, I hereby recommend that in the event the Commission does not find rehabilitation under Section 91(d), the Commission, nevertheless, should issue a waiver based upon the individual circumstances of this case. In particular, Mr. Cassick has demonstrated through the passage of time, that he has rehabilitated himself and is now a trusted and valued employee. He apparently was trusted by the judicial system in 1985 when he was granted work release and he is now trusted by his supervisors with thousands of dollars of coin coupons on a daily basis. This demonstrates his worthiness to be employed by the casino industry and I recommend the Commission grant such a waiver pursuant to Section 91(e) of the Act.

CONCLUSION AND RECOMMENDATION

For the reasons set forth above, I hereby **HOLD** that Craig M. Cassick has committed a disqualifying offense pursuant to Section 86(c)1 of the Act and that despite such disqualification he demonstrated by clear and convincing evidence his rehabilitation pursuant to Section 90(h) and 91(d) of the Act and **I FURTHER HOLD** that he possesses the requisite good character, honesty and integrity required of a casino employee license holder pursuant to Section 90(b) of the Act. For these reasons, **I HOLD** that Craig M. Cassick should be permitted to retain his casino hotel employee registration #96770-40 and receive a casino employee license. **I FURTHER RECOMMEND** that should the circumstances dictate, that the Commission grant to Mr. Cassick the extraordinary relief of waiver in order that he may retain his casino hotel employee registration #96770-40. **IT IS SO ORDERED.**

This recommended decision may be adopted, 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.

OAL DKT. NO. CCC-01817-90

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

8-10-90
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

8/17/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 21 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

FOR PETITIONER:

P-1 Letter from Mr. & Mrs. Robert Cassick dated July 5, 1990;
P-2 Letter from Clark Cooper dated July 4, 1990;
P-3 Letter from Anthony Waddington dated July 7, 19990;
P-4 Letter from Julio Toro dated July 3, 1990;
P-5 Letter from W.C. McQuaide Inc. dated July 30, 1990;
P-6 Letter from Julio Toro dated August 4, 1990;
P-7 Letter from Anthony Waddington, undated;
P-8 Letter from Clark Cooper dated August 4, 1990;
P-9 Letter from John Brallier dated July 30, 1990;

FOR RESPONDENT:

R-1 Investigative Summary Report dated June 15, 1989;
R-2 Complaint & Plea, County of Cambria, Pennsylvania;
R-3 Complaint & Plea, County of Cambria, Pennsylvania;
R-4 Personal History Disclosure Form(application for license);
R-5 Personal History Disclosure Form(application for registration);

WITNESSES

FOR PETITIONER:

Craig M. Cassick

FOR RESPONDENT:

Agent Joan D. Rubin, Division of Gaming Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EL-5
ORDER NO. 90-43-18
OAL DOCKET NO. CCC 01655-90

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

Petitioner,

v.

FINAL ORDER

ANTHONY CASSO,

Respondent.

A petition for the exclusion of respondent Anthony Casso having been filed pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.; and the matter having been transmitted to the Office of Administrative Law for a hearing; and the respondent having failed to participate in scheduled proceedings; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having heretofore issued a preliminary order of exclusion pursuant to N.J.A.C. 19:42-4.7 and 19:48-1.5A; and the Commission having considered the entire record of the proceedings at its public meeting of October 31, 1990,

IT IS on this 13th day of November 1990, ORDERED that the initial decision is adopted with the following modification:

> The respondent's failure to appear at the hearing constitutes an admission pursuant to N.J.A.C. 19:42-4.4(d), rather than N.J.S.A. 5:12-108(d) as stated by the ALJ.

IT IS FURTHER ORDERED that the name of Anthony Casso shall remain on the exclusion list until further notice based upon his constructive admission pursuant to N.J.A.C. 19:42-4.4(d) of the matters and facts alleged in the petition, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Anthony Casso shall not be permitted to enter any portion of the premises of a casino hotel facility in Atlantic City.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
FAILURE TO APPEAR
OAL DKT. NO. CCC 1655-90
AGENCY DKT. NO. 90-EL-5

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner;
v.
ANTHONY CASSO,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

No appearance by or on behalf of respondent

Record Closed: August 20, 1990 Decided: September 24, 1990

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

This matter was opened to the Office of Administrative Law following transmittal from the Casino Control Commission. The Division of Gaming Enforcement had filed a petition with the Commission seeking to place Mr. Casso's name on the exclusion list and thereby exclude him from any casino hotel facilities, as permitted by N.J.S.A. 5:12-71 and 107 and N.J.S.A. 19:48-1.1 et seq. Following transmittal, the matter was the subject of a prehearing conference held by telephone on April 5, 1990 and Administrative Law Judge Jeff S. Masin issued a prehearing order on April 12, 1990. Thereafter, the matter was scheduled for hearing before Judge Masin at the Office of Administrative Law in Newark on August 9, 1990. Prior to the hearing date, Mr. Casso, through counsel, had indicated

that he would be invoking his Fifth Amendment privilege at the hearing. Nevertheless, the parties were advised of the necessity of a hearing on August 9, so that all appropriate questions could be posed and witnesses presented. Prior to August 9, Mr. Casso's attorney advised Deputy Attorney General Fusco that he did not intend to appear at the hearing because he had not been able to be in communication with his client. On the day of the scheduled hearing counsel did not appear and Mr. Casso, who had also been notified of the hearing date by the Office of Administrative Law via notice of July 10, 1990, did not appear either. In view of Mr. Casso's failure to appear, the administrative law judge held the file for ten days, pursuant to N.J.A.C. 1:1-14.4. No explanation for Mr. Casso's failure to appear has been provided either by he on his own behalf or by his attorney. Based upon his failure to appear, I **CONCLUDE** that Mr. Casso has determined to forego an appearance in defense of the allegations contained in the complaint. Therefore, based upon N.J.S.A. 5:12-108d, Mr. Casso's failure to appear constitutes an admission of all matters and facts contained in the complaint and a waiver of his right to a hearing. Since the petition filed by the Division with the Commission alleges grounds for exclusion based upon allegations that Mr. Casso is a person appropriate for placement in that he has been identified as a member of a career offender cartel, N.J.S.A. 5:12-71, and since by his failure to appear he admits these allegations as well as the specific allegations contained in the Complaint detailing Mr. Casso's involvements, connections, and relations with the Luchese Organized Crime Family and further admits his plea of guilty to attempted bribery in conjunction with an indictment returned by the Bronx County Grand Jury, I **CONCLUDE** that Mr. Casso has admitted sufficient grounds for exclusion. It is therefore **ORDERED** that Mr. Casso shall be excluded from all casino facilities and entities in accordance with the statute and regulations and that all appropriate notifications shall be provided to all casino facilities so as to effectuate the purposes of this Order.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 24, 1990
DATE

JEFF S. MASIN, ALAJ

Receipt Acknowledged:

9/26/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 28 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-16
LICENSE NO. 003083-21
OAL DOCKET NO. CCC 05846-89
ORDER NO. 90-45-8

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF BETTY J. CORBIN

ORDER

A hearing 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 November 14, 1990,

IT IS on this 3rd day of December 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5846-89
AGENCY DKT. NO. 90-EA-16

BETTY J. CORBIN,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Betty J. Corbin, the petitioner, pro se

Norma L. Stancil, Deputy Attorney General for the respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: September 21, 1990 Decided: October 1, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Betty J. Corbin, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (blackjack floorperson and craps dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, she lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section

89b(2) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so she could be employed as a craps dealer at the Sands Hotel and Casino. By letter to the Commission, dated June 15, 1989, the Division objected to the petitioner's application for licensure as a blackjack floorperson and craps dealer asserting that the petitioner had committed the offense of theft by deception in violation of N.J.S.A. 2C:20-3 (sic N.J.S.A. 2C:20-4), which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on July 20, 1989, that questions were raised concerning her qualifications under the Casino Control Act and that she had the right to a hearing. By application dated July 25, 1989, which was received by the Commission on August 1, 1989, the petitioner requested a hearing. On August 2, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on August 8, 1989, 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 in the matter was held before Administrative Law Judge Lillard E. Law on December 7, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, theft by deception (in excess of $500, third degree).

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing commenced on May 14, 1990, in the Office of Administrative Law, Atlantic County Civil Court House, Atlantic City, New Jersey. At that time, the petitioner requested an adjournment in order to afford her the opportunity to

obtain counsel. This request for an adjournment was granted; however, she was informed that no further adjournments for this reason could be granted.

A hearing in the matter was held on September 21, 1990, at the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record closed.

FACTUAL DISCUSSION

In September 1979, the petitioner became employed as a security guard at Caesars Boardwalk Regency Hotel and Casino. In 1980, the petitioner became licensed as a blackjack dealer and she became a blackjack dealer at Caesars. In February 1981, the petitioner was released from her position at Caesars for excessive absenteeism.

On February 6, 1981, the petitioner filed a claim for unemployment benefits at the Atlantic City office of the Division of Unemployment and Disability Insurance (R-1, R-3 & R-4). Upon application, the petitioner was informed that it was her obligation to inform her local unemployment office of any changes in her employment status. The petitioner was determined to be eligible for benefits in the amount of $133.00 per week (R-1 & R-3).

On April 17, 1981, the petitioner became employed by the 1401 Artic Corporation as a barmaid at Ike's Corner. She retained this employment until February 5, 1982 (R-3). The petitioner did not report her employment at Ike's Corner to her local unemployment office, and she continued to receive unemployment benefits until August 6, 1981, at which time the petitioner voluntarily stopped receiving unemployment benefits (R-1 & R-3). During this period, the petitioner earned $2,036.80 while employed at Ike's Corner (R-3). Because the petitioner failed to notify her local unemployment office of her employment, she received unemployment benefits to which she was not entitled in the amount of $2,128.00 (R-1, R-3 & R-7).

In January 1982, the petitioner was hired as a blackjack dealer at the Sands Hotel and Casino. In approximately 1983, the petitioner received a credential as a craps dealer, and she began dealing craps at the Sands. She is still employed at the Sands as a craps dealer and her annual performance reports have been excellent. She has recently been considered for promotion to a box person; however, that promotion is being held pending the outcome of these proceedings.

On December 21, 1982, the Department of Labor (Department) attempted to notify the petitioner that it would be conducting a hearing on January 6, 1982 (sic 1983) concerning the unemployment benefits she had received between April 17, 1981 and August 6, 1981, while the petitioner had been employed (R-4). The petitioner had been unable to pay her rent while employed at Ike's Corner. As such, she moved from Pleasantville to Atlantic City. As a result, she did not receive any of the correspondence from the Department until it was provided to her by the Division in 1990 as part of its discovery in this case. (Upon her reentry into the casino industry in 1982, the petitioner notified the Commission of her change of address from Pleasantville to Atlantic City (R-17)). The petitioner failed to attend the scheduled hearing. The Department indicated that it was unable to contact the petitioner as the notice had been returned by the postal service as being undeliverable (R-5). The Department thereafter made a determination in the case based on the record. On January 25, 1983, the Department determined that the petitioner had received unemployment benefits in benefit year 1981 in the amount of $2,128.00, which she was not entitled to receive, and it imposed a fine of $320.00 for a total claim of $2,448.00 (R-7). The Department then filed a certificate of debt for $2,448.00 in the Superior Court of New Jersey on March 28, 1983, and a judgment was entered and docketed on April 1, 1983 (R-8, R-9, R-10 & R-12). While the case was referred by the Department to the Attorney General's office for possible criminal prosecution, the petitioner was never charged with any criminal offense arising out of this incident (R-6).

The petitioner is 49 years old and was approximately 40 years old at the time of her receipt of unemployment benefits. She is a single mother with two children, one of whom still resides with her. She dropped out of school after junior high school, however, she obtained her high school equivalency diploma (G.E.D.) when she was approximately 35 or 36 years of age.

At the time she was fired from Caesars she was residing in Pleasantville and supporting both of her then minor children. She was fired without notice for five incidents of absenteeism. She did not receive a final paycheck as it was withheld to pay for her attendance at dealers school. She continued to collect unemployment benefits while working at Ike's Corner as her salary was insufficient to pay for her rent, utilities, food and clothing for herself and her children. Her primary concern at that time was to provide shelter, food and clothing for her children. She was raised

in Tampa, Florida, and as such, she had no family in the area to help her, and she was the sole support for her minor children.

The first time the petitioner became aware of her unemployment debt was when she was questioned by a Division agent regarding her renewal application. The first time she received any of the supporting documentation was when it was provided by the Division as part of its discovery in this matter. The petitioner has since contacted the Department and entered into a repayment agreement. She has made payments in the last four months, and she is current. She intends to fully repay this debt.

The petitioner submitted five letters of recommendation in her behalf. The first, written by Wilbert L. Royal, Sr., vice-principal of the Westside School Complex provides in pertinent part:

> I have had the pleasure of knowing Ms. Corbin for over fifteen years. During that period of time she has demonstrated her willingness to go above and beyond the call of duty on task oriented duties.
>
> She is an inspiration to me and all of the people who interact with her. Her zeal and zest to better herself has always been an inspiration to me. Betty is a genuinely good person. In addition to knowing her, we reside in the same neighborhood. She is well liked and respected by all of the neighbors. She has my highest recommendation. [P-1]

The second, written by Jacqueline Blount, dated June 4, 1990, provides:

> I Jacqueline Blount have known Betty Corbin, for approximately ten years-in knowing her I have grown to love and respect her, because of the qualities she possesses.
>
> She is honest, hardworking, a very good mother, and has a great sense of humor that uplifts your spirits when you may be feeling down.
>
> Betty is the type of person anyone would feel fortunate and cherish as a friend. Because the qualities she possesses, once again are not found too much in this day and time. If there were more people like her this world would be a much happier place to live. [P-2]

The third letter was written by Rene' Smith and provides:

> I am a close friend of Mrs. Betty Corbin. She is a wonderful person.

> I have known Betty in excess of ten years. She is a respected employee.
>
> Everyone has the highest regards for Betty. She has been both a friend and a dedicated co-worker. I have known her to be extremely honest, trustworthy, and of the highest character. [P-3]

The fourth letter was written by Virginia Hill on June 28, 1990, and provides in pertinent part:

> She is a hardworking, law-abiding upstanding citizen of this community. She is the kind of person who will fulfill her obligations, when she can, regardless of how long it may take.
>
> She is a devoted mother and a true friend. I am proud to be living in the same neighborhood with her. Her word is her bond, which is a rare thing. [P-4]

The final letter was written by Gladys F. Gilmore and provides in pertinent part:

> She is a woman of great character and wonderful temperanet [sic] who enjoys a splendid reputation for integrity, honesty, and loyalty. [P-5]

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that her misconduct was, in part, due to mental and emotional immaturity, irrespective of her age. I am also inclined to believe that it was the result of inexperience and the difficulty in dealing with her financial and family affairs. At the time the petitioner obtained the job and failed to disclose this fact to her local unemployment office, she was in a difficult living arrangement. She had a significant drop in income. She could not afford to pay her rent or provide food or

clothing for her children. She was in debt, and her primary concern was to provide food and shelter for her children. Although her actions were clearly and admittedly wrong, the underlying circumstances do mitigate somewhat the seriousness of the misconduct. In addition, the absence of any other criminal misconduct supports this finding.

FINDINGS OF FACT

1. The petitioner received unemployment benefits from February 6, 1981 through August 6, 1981.

2. On or about April 17, 1981, the petitioner became employed at Ike's Corner as a barmaid.

3. Between April 17, 1981 and August 6, 1981, the petitioner failed to disclose her employment to her unemployment office and she wrongfully received unemployment benefits in the amount of $2,128.00 to which she was not entitled.

4. The Department of Labor determined that the petitioner had received unemployment benefits in benefit year 1981 in the amount of $2,128.00, which she was not entitled to receive, and it imposed a fine of $320.00 for a total claim of $2,448.00.

5. On March 28, 1983, the Department of Labor filed in the Superior Court of New Jersey a certificate of debt against the petitioner. On April 1, 1983, a judgment was entered and docketed against the petitioner in the amount of $2,448.00.

6. In September 1979, the petitioner became employed as a security guard at Caesars Boardwalk Regency Hotel and Casino. In 1980, the petitioner became licensed as a blackjack dealer and she became a blackjack dealer at Caesars. In February 1981, the petitioner was released from her position at Caesars for excessive absenteeism.

7. In January 1982, the petitioner was hired as a blackjack dealer at the Sands Hotel and Casino. In approximately 1983, the petitioner received a credential as a craps dealer, and she began dealing craps at the Sands.

She is still employed at the Sands as a craps dealer and her annual performance reports have been excellent.

8. She has recently been considered for promotion to a box person; however, that promotion is being held pending the outcome of these proceedings.

9. The petitioner is 49 years old and was approximately 40 years old at the time of her receipt of unemployment benefits.

10. She is a single mother with two children, one of whom still resides with her.

11. She dropped out of school after junior high school, however, she obtained her high school equivalency diploma (G.E.D.) when she was approximately 35 or 36 years of age.

12. The petitioner continued to collect unemployment benefits while working at Ike's Corner as her salary was insufficient to pay for her rent, utilities, food and clothing for herself and her children. Her primary concern at that time was to provide shelter, food and clothing for her children. She was raised in Tampa, Florida, and as such, she had no family in the area to help her, and she was the sole support for her minor children.

14. The first time the petitioner became aware of her unemployment debt was when she was questioned by a Division agent regarding her renewal application.

15. The first time she received any of the supporting documentation was when it was provided by the Division as part of its discovery in this matter.

16. The petitioner has since contacted the Department and entered into a repayment agreement. She has made payments in the last four months, and she is current. She intends to fully repay this debt.

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17. The petitioner is remorseful and has not been involved in any other criminal conduct.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . . .
>
> N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);
>
> . . . .
>
> g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> . . . .
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include,

without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concering the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section, except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . .

e. 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.

. . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception -third degree, which constitutes a violation of section 86c(1), and that, accordingly, she is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of $500 between April 17, 1981, and August 6, 1981, while she was employed by Ike's Corner constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:20-4, Theft by deception, provides:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

This statute has been held applicable where one wrongfully receives unemployment benefits. In State v. Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

> As we read the trial judge's findings, defendant knowingly misrepresented his employment status to obtain money "under pretense that he is . . . out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.[1] It is not necessary to prove a

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1 N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

"corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super. 137, 141-143 (App. Div.), certif. den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked - or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

The Division established, and the petitioner admitted during her testimony, that she knowingly received unemployment benefits to which she was not entitled from the Department of Labor. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g.

(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 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 or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;

5. The age of the applicant when the offense or conduct was committed;

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

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

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.

In regard to the first criterion, Ms. Corbin is a casino licensee and is employed as a craps dealer. As such, she does have direct responsibilities for actual gaming activities and does come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:20-4, theft by deception (third degree), over a sixteen-week period during which she was not employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The petitioner was suddenly fired from Caesars. She began collecting unemployment benefits. Even though she subsequently became employed as a bar maid, her income was not sufficient to pay her rent, utility, food and clothing bills. In fact, she lost her apartment because of her inability to make her rent payments. She was a single mother supporting two minor children with no assistance or support available from any other family members. She was simply concerned with providing for her family in a time of crisis. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tends to mitigate somewhat the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from April 17, 1981 until August 6,1981, when it ceased. The petitioner voluntarily stopped collecting unemployment benefits.

Fifth, the petitioner was 40 years old at the time of the offense. I believe that mental and emotional immaturity was a factor in this case irrespective of her

chronological age. The petitioner believes she has learned with maturity. She is now a responsible, productive member of society. In addition, it is clear that the underlying circumstances affected the petitioner's ability to deal reasonably with the problem at that time.

Sixth, the petitioner's misconduct was isolated in nature. She has not committed any other violations of the criminal laws.

Seventh, because of the underlying circumstances, the petitioner was only concerned with raising and providing for her family. Her family's security and her financial situation were major concerns. Because of her lack of education she was unaware of other alternatives which she could have pursued.

Eighth, the petitioner has made substantial rehabilitative efforts. She has begun making restitution and is current with her payments. The petitioner has been employed in the casino industry continuously since January 1982. Her performance has been exemplary. She has demonstrated that she has matured and has accepted responsibility. She is not being considered for a supervisory position as a box person. Her home life has also stabilized, and she has demonstrated her acceptance of responsibility. The petitioner has expressed remorse for her misconduct. Accordingly, there is little likelihood, if any, of a repetition. Essentially, there is nothing more the petitioner could do to establish her rehabilitation.

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

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Corbin was required to establish, by clear and convincing evidence, her good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that she is otherwise a person of good character, honesty and integrity. The misconduct did not involve her licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for her misconduct, regained control over her behavior, performed admirably within the casino industry during the past nine and one-half years, entered into a repayment agreement, and become a respected member of her community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincing establishes that Ms. Corbin is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Betty J. Corbin for the renewal of a casino employee license be **GRANTED**.

This **recommended** decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 1, 1990
DATE

Steven Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

10/2/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 4 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

cad

DOCUMENT IN EVIDENCE

Joint Exhibits:

J-1 Department of Labor, Division of Unemployment and Disability Insurance letter, dated November 22, 1985, re: canceling an erroneous certificate of debt

For the Petitioner:

P-1 Letter of Wilbert L. Royal, Sr., vice-principal of the Westside School Complex

P-2 Letter of Jacqueline Blount, dated June 4, 1990

P-3 Letter of Rene' Smith

P-4 Letter of Virginia Hill, dated June 28, 1990

P-5 Letter of Gladys F. Gilmore

For the Respondent:

R-1 Division of Unemployment and Disability Insurance Claimant Ledger, dated April 8, 1982

R-2 Division of Unemployment and Disability Insurance Original Assignment of Criminal Case, dated July 13, 1982

R-3 Division of Unemployment and Disability Insurance Claimant's Benefit Payment and Employment Record, dated March 9, 1982

R-4 Notice of Hearing, dated December 21, 1982

R-5 Record of Hearing, dated January 17, 1983

R-6 Division of Unemployment and Disability Insurance Letter, dated January 25, 1983, referring the case to the Attorney General's Office

R-7 Determination and Demand for Refund, dated January 25, 1983

R-8 Certificate of Debt dated March 28, 1983

R-9 Division of Unemployment and Disability Insurance Letter dated May 11, 1983

R-10 Division of Unemployment and Disability Insurance Letter dated May 16, 1983

R-11 1987 Employee license Renewal Application, dated July 22, 1987

R-12 Credit Bureau Associates Updated Credit Profile of Betty J. Corbin, dated August 10, 1988

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R-13 Division of Unemployment and Disability Insurance LOOPS Claimant Inquiry, dated December 2, 1988

R-14 Division of Gaming Enforcement Investigation Report, dated January 25, 1989

R-15 Credit Bureau Associates Updated Credit Profile, dated May 4, 1990

R-16 Not in evidence

R-17 Letter of petitioner to Casino Control Commission regarding her change of address, received April 22, 1982

WITNESSES

For the Petitioner:

Betty J. Corbin, the petitioner

For the Respondent:

Betty J. Corbin, the petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-399;
89-EA-441
LICENSE NOS. 00644-11;
001345-60
OAL DOCKET NO. 05080-89
ORDER NO. 90-23-3

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:
Respondent,	:
v.	:
DANIEL J. COSTANDINO, JR.	:
Complainant.	:
AND	:
APPLICATION OF DANIEL J. COSTANDINO, JR., FOR RENEWAL OF HIS CASINO KEY EMPLOYEE LICENSE, THE POSITION ADDITION OF SOLE OWNER/OPERATOR JUNKET ENTERPRISE AND GAMING SCHOOL INSTRUCTOR LICENSE	:

ORDER

A hearing 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 June 6, 1990,

IT IS on this 22nd day of July 1990, ORDERED that the initial decision is modified as follows:

> In addition to granting a casino key employee license and an endorsement for sole owner/operator junket enterprise, as recommended by the ALJ, the Commission also grants the application for a

gaming school instructor license. Although the gaming school instructor license application was not addressed in the prehearing order or at the OAL hearing, this application was consolidated with the casino key employee license renewal matter.

IT IS FURTHER ORDERED that the initial decision is adopted as modified provided, however, that the Commission expressly disavows that portion of the initial decision at pp. 18-20 wherein the ALJ discusses the obligation of an individual casino employee to exclude a person whose name does not appear on the Commission's exclusion list, pursuant to N.J.S.A. 5:12-71(d). As agreed by the parties at the Commission's public meeting of June 6, 1990, that issue was not raised in the record. There is no evidence to establish that the respondent had the requisite knowledge that any of the patrons with whom he met were persons who satisfied the criteria for exclusion pursuant to sections -71(a) and -71(d).

IT IS FURTHER ORDERED that the applications are granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly 10/4/90
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5080-89

AGENCY DKT. NO. 89-339 and 89-EA-441

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
DANIEL J. COSTANDINO, JR.,
Respondent,
and
DANIEL J. COSTANDINO, JR.,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Mitchell Schwefel, Assistant Attorney General for petitioner-respondent
(Robert J. Del Tufo, Attorney General of New Jersey, attorney)
Donald F. Manno, Esq., for respondent-petitioner

Record Closed: March 2, 1990 Decided: April 16, 1990

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, filed a complaint with the Casino Control Commission (Commission) on May 31, 1989, seeking sanctions against the casino key employee license no. 644-11 issued to Daniel J. Costandino, Jr., (respondent). In addition, the Division filed a letter with the Commission dated May 26, 1989, which presented negative information relating to the renewal of respondent's casino key employee license and for the position addition of sole owner/operation junket enterprise.

Respondent, through his attorney by way of letter dated June 19, 1989, requested a hearing in this matter. On July 13, 1989, the Commission transmitted the matter to the Office of Administrative Law (OAL) 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 conducted by the Honorable Beatrice S. Tylutki, ALJ, on September 29, 1989. The matter was set down for hearing on January 29, and 30, 1990, however, it was adjourned. The matter was rescheduled for hearing on March 1 and 2, 1990 and reassigned to the undersigned. The hearing was held, as scheduled, at the Absecon, New Jersey, Municipal Court. The hearing record was considered closed as of March 2, 1990.

ISSUES

The issues to be determined, as agreed by the parties at the prehearing conference, are these:

A. Whether Mr. Costandino accepted a gratuity in violation of N.J.S.A. 5:12-100(o)1, and if so, what is the appropriate remedy?

B. Whether Mr. Costandino possesses the requisite good character, honesty and integrity for casino key employee licensure pursuant to N.J.S.A. 5:12-89b(2)?

C. Whether Mr. Costandino possesses the requisite business ability for casino key employee licensure pursuant to N.J.S.A. 5:12-89b(3)?

D. Whether Mr. Costandino's behavior during the Division's investigation demonstrates a lack of candor which negatively impacts on his ability to show he possesses the requisite good character, honesty and integrity for casino key employee licensure pursuant to N.J.S.A. 5:12-89b(2)?

E. Whether Mr. Costandino gave the Commission a check, which was returned due to inadequate funds, during his 1986 application for a gaming school instructor license, and if so, whether this action has a negative effect on his business integrity?

BURDEN OF PROOF

The burdens of proof, as allocated to the parties and determined by the issues, are as follows:

1. The Division has the burden of proof, by a preponderance of the credible evidence, as to Issue A.

2. Respondent has the burden of proof, by the standard of clear and convincing evidence, as to Issues B,C,D and E.

FINDINGS OF FACT

Based upon the testimony of Thomas J. Logan, Agent with the Division in its Special Investigations Section, and respondent Costandino, among others; and the documents moved into evidence by the parties, I **FIND** the following **FACTS**:

Respondent Costandino, who was 36 years of age at the time of the hearing, has been in the casino industry since 1975 when he was 21 years of age. He began his career in Los Vegas, Nevada as a "shill" and moved to New Jersey in February 1979 where he was employed by Resorts International Hotel and Casino (Resorts) as the youngest licensed acting pit boss and acting shift manager in the New Jersey casino industry. Respondent received his casino key license in 1980 when he was 26 years of age. He subsequently was employed by Playboy casino where he worked approximately five years. During his Playboy employment, respondent was promoted to four different positions within the scope of his casino key license.

While employed by the Showboat, respondent held two job titles simultaneously; i.e., Executive Regional Manager of Player Development and Director of New York Operations. The Showboat did not provide an office in New York City from which respondent could operate in his capacity as Director of New York Operations. The Showboat did, however, install a business telephone in respondent's home in Linwood, New Jersey.

In or about November 8, 1988, respondent was asked to resign his position and take another position within the Showboat organization. Willard "Bucky" Howard, requested that respondent resign from his marketing positions and assume the duties in the gaming and of the business as a pit boss in baccarat. Respondent declined the offer and resigned with severance pay.

Issue A. Whether Respondent Accepted a Gratuity

Agent Logan testified, among other things, that he became aware in 1988, that the Federal Bureau of Investigation (FBI) was conducting surveillances in the Atlantic City casino industry with regard to known members of alleged organized crime. Video surveillance films were taken at the Showboat Hotel and Casino on August 7, 1988 and October 29, 1988 which were presented to Agent Logan by his supervisor, Irwin Schecter. Agent Logan was not able to identify any of the individuals on the film. However, he was advised by FBI agents from the New York and Philadelphia offices as to the identities of the people appearing on the films as alleged members of organized crime. Subsequently, Agent Logan viewed the films with Showboat officials who identified respondent Costandino, a casino host, with the other individuals identified as alleged members of organized crime (DGE-1).

Agent Logan identified those individuals appearing on the August 7, 1988 videotape as follows:

Matteo Romano, listed as a furniture salesman from Brooklyn, New York. He was indicted in 1988 under what has become known as the famous "pizza connection" case. He was acquitted of the charge. Romano was subsequently reindicted under the same indictment as that which indicted Giovanni Gambino, a/k/a John Gambino, in the United States District Court, Southern District of New York. Romano was arrested on May 10, 1982, after negotiating the purchase of five

kilograms of heroin from a government informant. Approximately $70,000 in cash and $170,000 in jewelry were seized at the time of his arrest. On July 7, 1982, Romano was convicted of conspiring to distribute heroin and sentenced to ten years imprisonment. Investigation by the FBI uncovered criminal activity by Romano while he was on parole. He was arrested on March 31, 1988 for continuing drug trafficking and other criminal activities. It is alleged that Romano is a business associate of organized crime.

Giovanni (John) Gambino is alleged to be a "made" member of the Sicilian Mafia and also a "made" member of the New York Gambino family La Cosa Nostra. John Gambino is alleged to be a capo in the Gambino crime family and also a member of the Sicilian Mafia.[1]

Francesco Gambino has been identified as a cousin of John Gambino. He is also known as "Cheech" and/or "Ciccio" and is alleged to be a member of the Sicilian Mafia.

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1. The Mafia is a secret criminal organization singularly dedicated to the enrichment of its members. Wherever Mafia or La Cosa Nostra exists, its structure, protocols and discipline are basically the same. In both the United States and Sicily, families are ruled by a "boss" or "capo." Inducted or "made" members, although all subordinate to the "boss" are directly supervised by "captains." The senior, supervisory section of the "family" - besides captains - also includes an under-boss and a family counselor or "consiglieri." In both the United States and Italy, ruling commissions oversee the efficient operation of the Mafia as an entity; thus, disputes are generally resolved internally.

   Mafia and La Cosa Nostra members adhere to a code of strict discipline designed to maintain secrecy. For example, a made member may only be introduced to another made member in the presence of a third who is able to vouch for the member being introduced. Strict obedience to one's superiors is essential. Sharing one's ill-gotten gains with Mafia superiors is required. Mafia business, moreover, is never to be discussed with outsiders (non-Mafia members), and sharing information with law enforcement is, of course, strictly forbidden. The sanctions for violation of Mafia rules are severe - in some cases the penalty is death. Made members are permitted to work towards their criminal ends using non-Mafia members. The made member who takes on such a partner, however, must educate his non-Mafia associate in the operational principles of secrecy and discipline because the member himself assumes the risk of any harm caused by deviation from rules by the associate. When disputes involving an associate occur, they will generally be brought to the attention of the supervising member, just as disputes involving members are taken up with the member's Mafia superiors (DGE-2, pp. 6,7).

Rosario Spotola is alleged to be a member of the Sicilian Mafia. At the time of the videotape, August 7 and October 29, 1988, Rosario Spotola was a fugitive from Italy. At the time of the herein hearing, Spotola was incarcerated in New York awaiting extradition to Sicily, Italy.

Agent Logan also asserted that Giuseppe Gambino, who does not appear on any of the videotapes, is John Gambino's brother. Giuseppe Gambino appears on the Division's and Commission's exclusion list. Giuseppe Gambino operates and supervises the Cafe Giardino in Brooklyn, New York. The Cafe Giardino is alleged to be the criminal headquarters for illegal drug dealing, loan sharking and illegal gambling. Real estate records and public utility records indicate that Cafe Giardino is owned by John Gambino who has a business office in the basement of the known premises.

On August 7, 1988, at approximately 12:57 a.m., respondent Costandino is observed on the videotape talking with John Gambino. Subsequently, at approximately 2:08 a.m., respondent Costandino is observed talking with John Gambino, Francesco Gambino and Rosario Spotola.

On October 3, 1988, respondent Costandino was summoned to the Division's office in the Showboat where he was interviewed by Agent Logan and Agent John Herbert with regard to the surveillance videotapes taken on August 7, 1988. Costandino was allowed to view the videotapes for the purpose of identifying certain individuals who appeared on the film with respondent. Agent Logan testified that Costandino identified Giovanni (John) Gambino as Dominic Longobaldi; Francesco (Cheech) Gambino as Frank Calabrese; and, Rosario Spotola as Salvatore (Sal) Spola. Respondent Costandino testified that it was his recollection that these were the names given to him as he was introduced to the individuals named above except he did not identify Francesco Gambino as Frank Calabrese to Agent Logan but rather, he identified the person on the film only as Calabrese. Respondent had a customer, Frank Calabrese, whom respondent knew and who was a rated player at the Showboat. Respondent Costandino also identified Matteo Romano as Matteo Romano as he appeared on the videotape. Respondent admits that he granted complementary (comps) services to these individuals by way of food, beverages and lodging.

Respondent also had a customer named Anthony Longobaldi. Costandino told Agent Logan on October 3, 1988, that he had received a telephone call from Anthony Longobaldi who asserted that his brother, Dominic Longobaldi, would appear at the Showboat on August 7, 1988. Respondent Costandino met the person at the casino identified to him as Dominic Longobaldi. Subsequently, on October 5, 1988, in a telephone conversation with Agent Logan and on December 13, 1988, when Division Agents took respondent Costandino's sworn statement, Costandino stated that he made a mistake in his identification of Dominic Longobaldi. Costandino asserted that he had conducted a further investigation where he searched his mind and remembered Dominic Longobaldi to be John Gambino. He asserted that he recalled John Gambino as a customer when respondent worked at Resorts and the Playboy casinos.

Agent Logan asserted that respondent was not the target of the FBI's investigation. Nor was there any indication that respondent was involved with the Mafia, organized crime, or illegal activities.

The videotaped surveillance filmed on October 29, 1988, as offered into evidence as DGE-1, commences at approximately 6:02 p.m. and continues, with interruptions until approximately 11:05 p.m. During the period between 6:02 p.m. (18:02) through 10:24 p.m. (22:24) Rosario Spotola and Frank Calabrese, among others, appear on the film. The grounds for the Division's charge that respondent accepted a gratuity is based upon the videotaped surveillance at the Showboat on October 29, 1988, between 11:00 p.m. (23:00) and 11:04 p.m. (23:04). The following represents my observations of the event:

At approximately 11:00, Frank Calabrese, Rosario Spotola and respondent appear to be engaged in conversation. Calabrese is standing to the left of respondent, who is writing on a pad with a pen, while Spotola is standing to Calabrese's left, centered between Calabrese and respondent. Respondent's attention is focused on Calabrese while respondent is taking notes because Spotola does not speak English. Spotola is then observed to back away from the two men and turn his back to the videocamera. While his back is turned toward the camera, Spotola is observed placing his right hand in his righthand jacket pocket. Thereafter, he turns to the left to take a couple of steps to rejoin Calabrese and respondent, who are still in conversation with respondent taking notes on a small writing pad

Respondent is observed shaking Calabreses' hand and then shake Spotola's hand. Respondent's back is toward the videocamera at this moment and it appears that he is addressing a remark to Calabrese. Immediately after the handshake between respondent and Spotola, Spotola is observed to place his righthand into his righthand jacket pocket. Respondent, who has the writing pad in his left hand and pen in his right hand, continues to take notes. Nothing is observed in respondent's hands other than the pad and pen. The videotape ends at approximately 11:03 p.m. (23:03:50)(DGE-1).

Respondent Costandino testified, credibly, that as he was shaking Spotola's hand, he felt paper in Spotola's hand, which he believed to be money. Respondent did not see what Spotola had in his hand; moreover, he told both Spotola and Calabrese he could not accept a gratuity and refused the offer.

Issue D. Whether Respondent's Behavior During the Division's Investigation Demonstrated a Lack of Candor.

Agent Logan testified that at the October 3, 1988, informal interview, respondent Costandino answered all questions put to him. Costandino was not advised at the time that he had a right to legal counsel, nor did respondent request the presence of his attorney at the informal interview.

Agent Logan testified, credibly, that respondent appeared with his attorney at the formal interview held on December 13, 1988, at the Richard J. Hughes Justice Complex, Trenton, New Jersey. Agent Logan asserted that respondent answered all questions asked of him and that respondent's attorney did not interrupt nor ask for a recess to consult with his client before permitting him to answer.

Respondent asserted that when he was asked to identify Rosario Spotola, he identified him as Salvatore or Sal Spola because that was the name given for the individual when he was introduced to respondent. Respondent testified that Spotola (Spola) did not speak English. Rather, Spotola only spoke Italian where Frank Calabrese interpreted for Spotola and respondent in their conversations on October 29, 1988. Respondent does not speak the Italian language. Respondent only learned that Sal Spola was actually Rosario Spotola through the Division's

investigation. On cross examination, respondent testified that Spotola was rated a "2" customer where he played with $35,000 to $50,000 per visit to the casino.

Respondent's testimony as to his identification to the Division of Giovanni (John) Gambino as Dominic Longobaldi and Francesco (Cheech) Gambino as Calabrese is set forth hereinbefore. In his capacity as a gaming host, respondent meets hundreds of customers and patrons. On August 7, 1988, respondent was introduced to Giovanni (John) Gambino as Dominic Longobaldi as the result of a telephone call respondent received from a current customer, Anthony Longobaldi. Respondent did not immediately recognize Dominic Longobaldi as John Gambino from his previous meetings of the person of some years in the past when respondent was employed by Resorts and Playboy casinos. Respondent also did not immediately recognize John Gambino because he was much heavier than respondent remembered and he used a cane. Respondent testified, credibly, that many customers in the gaming business alter their names or do not provide their proper name to casino employees. In any event, after some reflection, respondent recalled that Dominic Longobaldi was, in fact, Giovanni (John) Gambino and so identified him to the Division's authorities on October 5, 1988, and on December 13, 1988.

Issue E. Whether Respondent issued a Check to the Commission Which Was Returned Due to Inadequate Funds.

Respondent had been licensed as a gaming instructor while employed by Playboy where he was a baccarat instructor and baccarat manager. Prior to the Showboat casino opening, the management wanted respondent to teach its gaming employees, however, his instructor license had expired. Respondent completed the necessary Commission application forms and enclosed a check dated December 1, 1986, for the proper amount ($220.) which was drawn against the Provident National Bank (Provident), Philadelphia, Pennsylvania. The check was returned to the Commission marked NSF (nonsufficient funds). The return of the check prompted the Commission to write to respondent to advise him, among other things, that no work permit would be approved until payment was made and that respondent was precluded from employment under this credential.

Respondent asserted that in December 1986, he, his wife and newborn child were living with his wife's parents in Media, Pennsylvania while respondent's home

in Linwood, New Jersey was under construction. Respondent was acting as his own general contractor, an endeavor with which he was inexperienced. Respondent had three accounts with Provident, two of which were money market accounts having a limit of three checks per month. Although it appears that the Provident provided automatic transfer from and to respondent's accounts to avoid overdrafts, the three check limit per month was enforced. Respondent believes that his December 1, 1986 check to the Commission was one of those which was the result of the three checks per month limit and, thus, not honored by the bank. Respondent asserted he corrected the deficiency by personally appearing at the Commission office with a money order.

Now that respondent and his family reside in their completed Linwood, New Jersey home, he has no need for the Provident accounts. All of his personal accounts are now in New Jersey banking institutions.

Respondent's casino key employee license has been renewed twice before by the Commission without this issue having been raised by the Division.

Issue B. Whether Respondent Possesses the Requisite Good Character, Honesty and Integrity.

Two witnesses testified as to respondent's good character, honesty and integrity. Both witnesses have been supervised by respondent as employees in the casino industry. Michael Devine has known respondent for eight years and respondent was responsible for Devine's employment at the Showboat as a host in 1987. Respondent supervised Devine for approximately one and one-half years where Devine observed respondent on a daily basis. Devine opined that respondent was one of the most honest people he had ever met. Devine also testified that in his opinion, respondent had superior ability as a casino employee with great skill in performing his job.

Frank Mauriello testified that he has known respondent since 1979, the year Resorts opened. Mauriello was employed as a dealer at Resorts and respondent was his direct supervisor on a rotating basis; first as a floorperson and later as a pit boss. Respondent again supervised Mauriello when the two moved to Playboy. Mauriello was employed as a floorperson while respondent worked as a pit boss and was later

promoted to shift manager. Mauriello opined that respondent's good character, honesty and integrity were fine.

Respondent introduced documents which indicated the Showboat authorities appreciated respondent's work and contributions to that enterprise. In a memorandum, undated, his annual salary was increased by $3000 with a "thank you" for doing an excellent job (R-3). On October 20, 1988, Frank A. Modica, President and Chief Executive Officer of Showboat, recognized respondents contribution and awarded respondent a "special bonus" of $5,940. (R-4).

There were no reports, documents or other indicia submitted by the Division with regard to the issue of respondent's good character, honesty and integrity.

Issue C. Whether Respondent Possesses the Requisite Business Ability for Casino Key Employee Licensure.

On or about April 8, 1988, respondent Costandino was appointed Director of the Showboat's New York office for player development (R-1). On or about April 26, 1988, the Showboat perfected its Petition to the Commission for the purpose of establishing a place of business for player development activities in the New York City area; i.e., telephone marketing, coordination of special events, arrangement of hotel accommodations and transportation to the Showboat. The Petition requested authorization from the Commission for permanent off-site (New York) generation and storage of original books, records and documents at a secure facility (R-2). The Showboat New York office did not open. However, respondent proceeded with his duties and responsibilities as director of development in the New York area. Respondent performed his duties from his home where the Showboat installed a business telephone. Respondent was also required to travel to New York where he conducted his business from hotel rooms by telephone and by personal meetings with potential customers.

On August 24 and 25, 1988, respondent was in New York City in the performance of his duties in player development. He was lodged at the Holloran House Hotel where he made approximately 27 telephone calls to numbers outside of the hotel. One such call was made to the number 718-745-8070 which was the J. Apple Concrete Company, Brooklyn, New York. Agent Logan subsequently learned

that the principals of the company were John Gambino and Guiseppe Gambino. When questioned about this telephone call by Deputy Attorney General Auriemma at the sworn interview held on December 13, 1988, Agent Logan testified that respondent said he had placed the call to G. and G. Concrete Company in Brooklyn. Agent Logan opined that G. and G. stands for Gambino and Genevez Concrete Company. Agent Logan's personal investigation revealed that G. and G. Concrete Company is owned by John Gambino, his brother Joseph Gambino and others. The Agent opined that J. Apple Concrete and G. and G. Concrete were one and the same and operated as real businesses. Agent Logan learned that Lorenzo Mannino was employed by G. and G. Concrete Company as John Gambino's chauffeur. Agent Logan asserted that Lorenzo Mannino was then under indictment for narcotics violations in the United States District Court, Southern District of New York.

Respondent Costandino advised Agent Logan that he had received a message from Showboat on his long distance beeper to call a Maryann at 718-745-8070. Respondent advised Agent Logan at the December 13, 1988 sworn interview that respondent had talked to others at this telephone number, namely, Lorenzo Mannino and Guiseppe Gambino. Respondent voluntarily turned over his home-business telephone log to Agent Logan. The record shows that between March 25 through October 7, 1988, respondent made seven telephone calls to J. Apple Concrete and/or G. and G. Concrete.

At the December 13, 1988, sworn interview, respondent Costandino asserted that he had used many New York restaurants as meeting places for his Showboat customers. Respondent volunteered that he had visited Cafe Giardino in Brooklyn, New York on several occasions. He had met Lorenzo Mannino at the Cafe Giardino, however, he was not certain as to whether he had met John Gambino at the establishment. Respondent testified he had met Giuseppe Gambino there Respondent did not believe it was inappropriate for a casino key employee to talk with a person who was on the Commission's exclusion list when the excluded person initiated a conversation.

Agent Logan testified that Cafe Giardino was the headquarters of John Gambino and operated by Giuseppe Gambino. Agent Logan asserted that the restaurant was used as a meeting place and as the operational headquarters of the narcotics trade for the Gambino crime family.

Michael Devine asserted he had observed respondent's business ability as a casino key employee and opined that it was superior where respondent demonstrated great skills. Mr. Devine described respondent's duties of a player development manager as a person who seeks new business and sustains the current business of the casino. The player development manager is a salesperson who visits and promotes clients who already patronize the casino as well as seek out new clients. He asserted that it was a requirement that persons on the Commission's exclusion list not be brought into the casino.

Mr. Devine contended that the Showboat New York office was not established because of the frequent changes in the upper level management of the property. He asserted that respondent had completed all of the necessary work for the establishment of the New York office, however, the plan was never implemented by management.

Respondent Costandino presented evidence that Showboat management recognized his business ability when it appointed him to the position of Director of its New York office for player development in or about April 1988 (R-1). Other indicia of Showboat's appreciation of respondent's job performance is reflected in its granting respondent a substantial pay increase (R-3) and a significant bonus (R-4) in or about October 1988. Changes in the Showboat's management altered its plan to open the New York City office, therefore, preventing respondent the opportunity to fully function in his capacity as its director. Similarly, the management changes at Showboat worked to respondent's detriment where the new management worked its own team of employees in its player development. The new management requested respondent's resignation from his positions in player development with an offer to the position of pit boss. Respondent refused the offer. Instead, respondent negotiated severance pay and, thereafter, submitted his resignation and left the employ of Showboat. There is nothing in the record to demonstrate that the Showboat doubted or questioned respondent's business ability.

Respondent asserted that he has not nor would he invite an individual to the casino who appeared on the Commission's exclusion list.

DISCUSSION AND CONCLUSIONS

It is established that licensure under the Casino Control Act (Act) is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." N.J.S.A. 5:12-1b(8). Section 129 (1) of the Act provides for the revocation of or other sanctions against the license held by a person "for the commission of any ... offense or violation of this act which would disqualify such person from holding his license..."

N.J.S.A. 5:12-100 o (1), Unlawful Gratuity

The Division contends that respondent accepted a gratuity from Rosario Spotola (known to respondent as Salvatore Spola) on October 29, 1988 at approximately 11:03 p.m. Section 100 o (1) of the Act provides, in pertinent part, that:

> It shall be unlawful for any casino key employee ... to solicit or accept ... any tip or gratuity from any player or patron at the casino where he is employed.

The Commission may exercise its authority to impose sanctions against a licensee or registrant in addition to any penalty, fine or term of imprisonment authorized by law, after appropriate hearings and factual determinations. Section 129 (5) of the Act, grants the Commission authority to:

> Access 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 ...

The Division bottoms its complaint, that respondent accepted a gratuity, upon the videotape taken on October 29, 1988 at the Showboat between 11:00 p.m. and 11:04 p.m. where respondent, Frank Calabrese and Rosario Spotola are engaged in conversation. The film shows the three men in conversation with respondent writing on a notepad. It is observed that Spotola turns away from the other two men to take a couple of steps to his right and turn his back to the videocamera and the two men in conversation. Respondent is in conversation with Calabrese and continues to take notes while Spotola, with his back toward the camera, is seen

placing his right hand into his right jacket pocket. Spotola turns back, facing the camera, and joins the two men in conversation. Respondent is then seen holding the pen and notepad in his left hand, shake Calabrese's right hand with respondent's right hand. Respondent then turns toward Spotola, with respondent's back now toward the camera, and shakes Spotola's right hand. The hands are withdrawn and Spotola is seen to immediately place his right hand in his right jacket pocket while respondent continues to write on his notepad.

Nothing can be observed in respondent's right hand other than the pen or pencil with which he is taking notes. Respondent is not observed to have placed his right hand in any of his pockets immediately after the handshake with Calabrese or Spotola. No one from the Division or Showboat immediately went to the casino floor to question respondent about the event of the meeting of the three men between 11:00 p.m. and 11:04 p.m. on October 29, 1988. Respondent admitted, on December 13, 1988, that Spotola had attempted to pass something to respondent during the handshake on October 29, 1988, and that respondent had refused to accept it.

Based on my observations of the videotape DGE-1, and particularly the noted observation that Spotola placed his right hand in his right jacket pocket immediately after the handshake with respondent, I **CONCLUDE** that the Division has not carried its burden of proof, by a preponderance of the credible evidence, to demonstrate that respondent Costandino accepted a tip or gratuity from patron Spotola in violation of N.J.S.A. 5:12-100 o (1).

Accordingly, this charge in the Division's complaint is **DISMISSED**.

N.J.S.A. 5:12-89b (2) Production of Information as Required, and Good Character, Honesty and Integrity.

Pursuant to N.J.S.A. 5:12-89b(2), respondent is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When,

as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra, In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that respondent possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

The Division contends that respondent does not possess the requisite good character, honesty and integrity for casino key employee licensure and, further, that his lack of candor during its investigation negatively impacts on his good character, honesty and integrity. With regard to the latter, Agent Logan's testimony clearly shows that respondent answered questions put to him during the informal interview held on October 3, 1988 and the formal, sworn interview held on December 13, 1988. At the October 3, 1988 informal interview, respondent was not advised that he had a right to legal counsel. However, he answered all of the questions asked of him to the best of his recollection. On that occasion, respondent did not accurately identify at least two individuals; i.e., John Gambino and Rosario Spotola. Respondent was introduced to John Gambino as Dominic Longobaldi and did not recognize his true identity because John Gambino had gained considerable weight since their previous meetings at Resorts and Playboy. Gambino's appearance was also changed by the fact that he now walked with the aid of a cane. On October 5, 1988, subsequent to the informal interview respondent reported to Agent Logan in a telephone conversation that he believed Dominic Longobaldi to be John Gambino.

Respondent did not learn that Salvatore (Sal) Spola was actually Rosario Spotola until the completion of the FBI's investigation. Respondent had known

Spola to be a good customer, rated with a "2", because he brought between $35,000 and $50,000 to the casino on each of his visits. Respondent was also aware that there were three accounts at Showboat under the name of Spola.

Agent Logan also testified that respondent answered all questions asked of him at the formal, sworn interview held on December 13, 1988. Although respondent did have an attorney accompany him on that occasion, there were no interruptions of the interrogation conducted by the Division either by respondent or his legal counsel. While respondent hesitated to answer some questions put to him, he did so with the caveat that he did not want to give an answer to which he was uncertain or one which would be misleading.

Respondent produced two witnesses who knew him and had worked under his supervision in the gaming industry. Both witnesses; Michael Devine and Frank Mauriello, testified to respondent's good character, honesty and integrity. Devine opined that respondent was one of the most honest people he had ever met.

No evidence was produced to demonstrate that respondent had committed any crimes or that he had been involved in any criminal activity. The evidence produced did demonstrate, moreover, that respondent's Showboat employers appreciated his performance and contributions.

I **CONCLUDE** that respondent had met his burden of proof, by clear and convincing evidence, that he does possess the requisite good character, honesty and integrity for licensure under N.J.S.A. 5:12-89b(2). I also **CONCLUDE** that to the extent possible, respondent answered all questions put to him by the Division's representative on October 3, and December 13, 1988, and, therefore, that he complied with the statutory provisions found in section 89b(2) of the Act.

N.J.S.A. 5:12-89b (3) Business Ability

Section 89b (3) of the Act, provides that:

> Each applicant [for a casino key employee license] shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence that the applicant has sufficient business ability

> and casino experience as to establish the reasonable likelihood of success and efficiency in the particular position involved.

The record shows that respondent has been involved with the casino industry since 1975 when he was then 21 years of age. He began in the business as a lowly "shill" in Las Vegas, Nevada; playing with the casino's money to induce patrons to sit at the table he was playing and gamble with their money. He moved to New Jersey in February 1979 and was employed at Resorts at the age of 25 where he was known as the youngest licensed pit boss and acting shift manager in the New Jersey casino industry. He has subsequently been employed by Playboy and Showboat where he has been promoted to higher level positions. He has also instructed dealers in gaming activities. The last two positions he held with Showboat before he resigned were titled, Executive Regional Manager of Player Development and Director of New York Operations.

There is no doubt nor question that respondent has exhibited sufficient and varied casino experience to insure success in the positions he has held and those for which he now applies. The Division, however, raises the issue of respondent's business probity and judgment because of his contacts with alleged members of organized crime. The Division contends that respondent, by virtue of his casino key license, is required to operate beyond the Commission's exclusion list and, therefore, not provide services or comps to alleged crime figures. The Division relies upon N.J.S.A. 5:12-71d for this proposition and which provides as follows:

> d. Any list compiled by the commission of persons to be excluded or ejected shall not be deemed an all-inclusive list, and licensed casino establishments shall have a duty to keep from their premises persons known to them to be within the classifications declared in paragraph a. of this section and the regulations promulgated thereunder.

Respondent asserted he was familiar with the provisions of section 71d of the Act and it was his understanding that he was not allowed to book people that are on the exclusion list or do any business as far as vending or anything of that nature with those individuals. The Division contends that the casinos have a duty to police their own industry and exclude individuals who are not on the exclusion list. Assistant Attorney General Schwefel asserted that respondent should be concerned about individuals who have been identified as high ranking members of organized crime

and whose names do not appear on the Commission's exclusion list. Assistant Attorney General Schwefel asserted that respondent had a duty to protect the casino by not extending complimentaries to such individuals nor to extend these persons the courtesies available to respondent in his position as an executive in the casino marketing department.

Respondent argues that the Division's position, with respect to non-exclusionary persons, is not the state of the law. I agree.

Respondent has not been authorized to exclude any individual from the casino in which he has been employed; either by management or statute. There is nothing in this record to suggest that Showboat's management authorized respondent to exclude any person from its casino who met the minimum age requirement and who had the wherewithal to gamble. Too the contrary, respondent was employed to seek out and encourage people with the means to do so, to come to the Showboat and participate in its gaming activities. For respondent, on his own initiative and unilaterally to exclude paying patrons from the gaming tables on a mere suspicion of criminal activity or association with criminals without more, could lead to disastrous consequences. One, respondent could lose his job and; two, his actions might lead to litigation on the part of the individual excluded.

The Legislature authorized the Commission to establish, by regulation, a list of persons who are to be excluded or ejected from any licensed casino establishment. N.J.S.A. 5:17-71a. The Commission is then admonished to define the standards by which the exclusion of certain individuals is to be implemented. The Commission's order to exclude many neither be arbitrary nor capricious but, rather, by the application of due process and an opportunity for a full plenary hearing prior to any decision to exclude. N.J.A.C. 19:48-1.1 et seq. and N.J.A.C. 42-4.1 et seq.

Individual casinos may, on their own initative exclude patrons; i.e., those who have not paid their gambling debts to the casino. That, however, is not the situation here. The Division contends that in the instant matter, respondent should have, at the very least, not provided comps to individuals it suspected as being involved in criminal activity; knowledge not conveyed to nor made privy to respondent. While it is recognized that the criminal element must be prevented from involvement in

the casino industry in order to protect the integrity of the industry, it is also recognized that statutory and regulatory provisions exist to accomplish this end.

I **CONCLUDE** that such arbitrary and capricious action by respondent as to unilaterally exclude or otherwise discriminate against patrons is not the state of the law nor was respondent authorized by the Showboat management to exclude any patron whose name did not appear on the Commission's exclusion list.

I **FIND** and **CONCLUDE** that respondent has shown, by competent, clear and convincing evidence, he possesses the requisite business ability for licensure as a casino key employee.

N.J.S.A. 5:12-89b (3) Business Integrity

There is no doubt, and respondent admits, that he issued a check in 1986 to the Commission for the renewal of his gaming school instructors license and the check was returned due to nonsufficient funds in the account from which the check was drawn. Respondent testified as to the reason for the mistake and I **FIND** the explanation to be reasonable.

It is noted here that respondent has gone through two licensing reviews since the 1986 check error and neither the Division nor the Commission has raised this as an issue for respondent's licensure. It is also noted for the record that the Division takes no position with regard to this issue.

Accordingly, I **CONCLUDE** that respondent did, in fact, present a check to the Commission which check was returned due to inadequate funds. I further **CONCLUDE** that this inadvertent error did not nor does it have a negative effect on respondent's business integrity.

It is therefore, **ADJUDGED** that the Division's complaint against respondent Daniel J. Costandino, Jr. be and is hereby **DISMISSED**. It is for the **ADJUDGED** that respondent's casino key employee license be renewed and that the endorsement for sole owner/operator junket enterprise be added to respondent's casino key employee license.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

16 April 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

4/19/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 19 1990
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Thomas Logan

For the Respondent:

Michael Devine
Frank Mauriello
Daniel J. Costandino

EXHIBIT LIST

For the Petitioner:

DGE-1 Videotape
DGE-2 FBI Affidavit
DGE-4 Agent Logan's Report
DGE-6 Sworn Statement of Mr. Costandino
DGE-7 Halloran House phone bill
DGE-8 Phone bills from Mr. Costandino's home

For the Respondent:

R-1 Internal Memorandum of Showboat from John Lee
R-2 Petition to Casino Control Commission to open New York Office
R-3 Notice from John Lee Concerning Mr. Costandino's Pay Raise
R-4 Letter to Mr. Costandino from Mr. Modica
R-5 Copy of Returned Check for Gaming Instructor License

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-103
APPLICATION NO. 004431-11
OAL DOCKET NO. CCC 7958-89
ORDER NO. 90-39-6

APPLICATION OF SHIRLEY E. DAVIS
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 3, 1990,

IT IS on this 24th day of October 1990, ORDERED that the initial decision is modified as follows:

1. To reject the finding that the applicant failed to disprove the disqualifying conduct by a preponderance of the evidence, and to find that the credible proofs in the whole record fail to establish the existence of the disqualifying conduct by a preponderance of the evidence; and

2. To conclude that the applicant has established her good character, honesty and integrity by clear and convincing evidence.

ORDER NO. 90-39-6

IT IS FURTHER ORDERED that the application is granted for the reasons stated on the record of the Commission's October 3, 1990, public meeting, which record is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7958-89
AGENCY DKT. NO. 90-EA-103

SHIRLEY E. DAVIS,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Shirley E. Davis, petitioner, pro se

Charles F. Kimmel, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: **May 29, 1990** Decided: July 2, 1990

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

Shirley E. Davis applied for licensure as a casino key employee, designating the positions desired as pit boss in blackjack, craps and roulette. By letter of August 25, 1989, the Division of Gaming Enforcement opposed licensure. The Casino Control Commission transferred the matter to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. following Ms. Davis' request for a hearing with respect to the recommended denial.

A prehearing conference was held by telephone before Honorable Joseph F. Fidler, ALJ on January 23, 1990. Judge Fidler issued a prehearing order on February 8, 1990, in which he listed the issues as:

1. Has the petitioner engaged in conduct constituting the offense of theft by deception in the third degree, contrary to N.J.S.A. 2C:20-4, which would be a disqualifier for licensure pursuant to sections 86c(1), 86g, and 89(b) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.)?

2. Has the petitioner established her good character, honesty and integrity, required for casino key employee licensure, pursuant to section 89b(2) of the act?

EVIDENCE

The Division's objections to Ms. Davis' application stem from her alleged commission of fraud in connection with receipt of unemployment benefits. According to records entered in evidence at the hearing, Ms. Davis received her first payments for unemployment benefits on September 15, 1981. According to her testimony, she had been laid off from her employment at the Playboy Casino Hotel in September of 1981 and as a result applied for benefits. She collected them until February of 1982. Although Ms. Davis denies that she was ever gainfully employed during the period September 1981 to February 1982, on December 17, 1985 the Division of Unemployment and Disability Insurance sent her a Determination and Demand for Refund of Unemployment or Disability Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation, R-1, which document claimed that Ms. Davis had received a total overpayment of $2,411.25, as a result of her having received benefits through false or fraudulent representation. Specifically, the notice advised that during the time that she was receiving unemployment benefits she was employed by Building Block Early Childhood Center. She was fined a total of $482.25, in addition to the overpayment of benefits.

According to Ms. Davis, she worked on a strictly volunteer basis for Building Blocks, which was located in Somers Point, New Jersey. She had been asked if she would work by Nancy Scribner, who was the founder and head of the Building Block Center. During her time as a volunteer with the center, Ms. Davis was not paid, received no checks, received no W-2 forms and did not file a 1040 tax return indicating any income. In addition, Davis was not employed by any other employer during the period during which she received unemployment benefits.

According to the applicant, when she received the notification from the Division of Unemployment seeking return of the allegedly fraudulently obtained benefits, she contacted Nancy Scribner, who said that she would take care of the problem. In addition, according to the witness, she wrote to the Division of Unemployment in response to their demand for payment and in one letter both asked for a hearing on the alleged obligation and also indicated that she could pay $25 per month in payment of the debt. By letter of March 17, 1986, the Division advised her that it would not accept $25 per month, but instead would accept a minimum acceptable amount of $150 a month on the total debt of $2,459.47. No mention was made of a hearing and she was never advised of any.

Subsequent to these communications, Davis became aware that the state had seized her property tax rebate. When she heard nothing further from the Division of Unemployment she assumed that they were satisfied with the amount of money they had received as a result of this seizure, although it was certainly not the full amount of money owing in accordance with their demand. In view of their failure to contact her and advise that they were demanding any more of the total sum, she assumed that they were satisfied.

Ms. Davis explained that Nancy Scribner contracted cancer sometime after her initial contact with Scribner concerning the unemployment demand. As a result she stopped bothering Scribner. Scribner has since died.

Ms. Davis also testified that she had filed for bankruptcy and had attempted to list the obligation to the Division of Unemployment as a debt to be discharged. According to the investigation report prepared in connection with the Division of Gaming Enforcement's investigation of Ms. Davis' application for key license, she filed her bankruptcy petition on July 12, 1985 with the United States Bankruptcy Court in Camden. The judgment for the unemployment compensation was filed on January 24, 1986. Although from the dates it appears that the bankruptcy petition was in fact filed before the judgment Ms. Davis asserts that the attempt to include the New Jersey Unemployment Judgment for discharge was made subsequent to the filing of the bankruptcy petition and of course after the filing of the unemployment judgment.

Ms. Davis paid the outstanding debt by tendering a check in the amount of $2,412.63 to the Division of Unemployment and Disability Insurance on September 28, 1989. A Notice of Satisfaction advising that the debt had been satisfied was

offered in evidence. The Division's letter of objection, noting its objection as being based upon the alleged fraudulent receipt of unemployment benefits and also noting that the substantial portion of the debt was still outstanding, is dated August 25, 1989, although it was not stamped received by the Casino Control Commission until September 18, 1989 and there is no evidence as to when Ms. Davis first saw the letter. When questioned concerning the timing of the repayment, Ms. Davis insisted that she mailed the check to the Division of Unemployment prior to receiving the Division of Gaming Enforcement's letter to the Casino Control Commission.

According to Ms. Davis, if any fraud occurred in this case it was not on her part. She cannot answer as to why the Division of Unemployment might have been advised by anyone that she was paid for her services as a volunteer when she in fact was not.

Ms. Davis presented no other witnesses nor did she present any character reference letters.

DISCUSSION

In this case the petitioner seeks licensure as a casino key employee. In order to be so licensed, she must possess good character, honesty and integrity and integrity. In addition, in this case, the evidence must satisfactorily establish that she did not commit a per se disqualifying offense pursuant to N.J.S.A. 5:12-86c(1). Since she was never prosecuted for the alleged fraud, the Division has proceeded to attempt to prove that it in fact occurred pursuant to the authority granted to the Division in N.J.S.A. 5:12-86g.

Because a key employee license is at issue, the petitioner is not entitled to prove rehabilitation from any per se disqualifying conduct. Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301, 308 (1985). Thus, if the evidence establishes that Ms. Davis did in fact commit unemployment fraud, she is disqualified and cannot be licensed.

The circumstances of this case are somewhat unusual. In the typical situation where a person seeks a license or registration to work in the casinos, and where unemployment fraud has been alleged, the applicant admits having received unemployment benefits while having been employed and presents reasons why such conduct occurred. Here Ms. Davis denies any fraud, claiming that, despite the

Division of Unemployment's claim and her own conduct in repaying the Division, she never was paid by the alleged employer and therefore was entitled to receive unemployment benefits and owed the Division no money.[1]

Both sides in this case have presented evidence which is somewhat lacking in scope. From the Division's standpoint, its presentation of the records of the Division of Unemployment merely involve the form which asserts the claim. The underlying data, whatever that may have been, which supported the conclusion of the Division of Unemployment that Ms. Davis had been gainfully employed and that she had been paid monies during the period when she received unemployment benefits, has not been presented. As a result, in the absence of any documentation which may have been provided by Building Block to the Division of Unemployment, we cannot be certain on what basis the Division reached its conclusion that money was owed. At the same time, the evidence presented by the Division does establish that a claim was put forth by the Division, that there was no hearing on the matter, that Ms. Davis eventually paid the claim, and that she received a Notice of Satisfaction for the payment.

From Ms. Davis' standpoint, the evidence on her side is equally lacking. She has asserted that she was not paid, but she is unable to present any evidence in support of that. The letter which she was able to obtain from the alleged employer merely indicates that no records are available. The founder and operator of the facility at the time in question is deceased. Thus, Ms. Davis' assertion is supported solely by her own possibly self-serving testimony. In addition, with respect to the good character issue, Ms. Davis' testimony is again devoid of support.

The problem presented by this case is that it is difficult to imagine why the Division would have received any information from Building Block indicating that Ms. Davis was being paid for her work when in fact she was not being paid. While there might be an explanation for this, it has not been forthcoming.

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[1]Here, with a key employee license at issue, the "typical scenario" mentioned above, which involves an admission of disqualifying conduct and an attempt to prove rehabilitation, would be futile, in view of the absence of rehabilitation as a viable issue.

Although Ms. Davis was quite certain as to the circumstances of her relationship to Building Block, I **FIND** that the testimony and evidence presented by her fails to convince me by a preponderance of the credible evidence that she was not in fact paid any money for the work that she did at that facility. While she now asserts that she paid the Division of Unemployment over $2,400 in September of 1989 separate and apart from any connection with her application for licensure as a casino key employee and prior to receiving the Division of Gaming Enforcement's letter, I am unconvinced that this is what happened. The circumstances of the timing of her payment, so close after the Division issued its letter to the Commission, but yet far enough removed to have permitted the letter to have been received by her, would appear to point to the likelihood that upon receipt of the letter Ms. Davis recognized that she might have difficulty getting licensed if the debt was still outstanding and therefore she paid the debt.

Based upon the evidence presented, I am constrained to conclude that Ms. Davis' testimony before me was less than candid. In addition, separate and apart from her obligation to satisfy the question of whether or not she in fact had engaged in fraud, with respect to the good character, honesty and integrity issue, she bears the burden of establishing those characteristics by clear and convincing evidence. Given the uncertainties of the situation surrounding the unemployment claim, and my own uncertainty as to the complete truthfulness of her testimony at the hearing, I cannot find that she has established good character, honesty and integrity at the high level required by the Casino Control Act.

For the reasons expressed, I **CONCLUDE** that Ms. Davis has failed to meet the burdens placed upon her by the Act for receiving a casino key employee license. Under these circumstances, her application must be **DENIED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 2, 1990
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

7/3/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 10 1990
DATE

Jaynee LaVecchia/K.S
OFFICE OF ADMINISTRATIVE LAW

jz

EVIDENCE LIST

On behalf of petitioner:

P-1 Letter of May 1, 1990

P-2 Notice of Satisfaction

On behalf of respondent:

R-1 DETERMINATION AND DEMAND FOR REFUND OF UNEMPLOYMENT OR DISABILITY BENEFITS AND IMPOSITION OF PENALTY AND DISQUALIFICATION BECAUSE OF WILLFUL MISREPRESENTATION, dated December 17, 1985

R-2 Letter of March 1986 from the Division of Unemployment

R-3 Division Investigation Report

R-4 Application for Casino Key Employee License

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 83-347
LICENSE NO. 002418-21
OAL DOCKET NO. CCC 04959-86
(CCC 7979-85 ON REMAND)
ORDER NO. 90-24-13

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

Complainant,

v. ORDER

ARMOND R. DeCICCO,

Respondent.

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of June 13, 1990,

IT IS on this 24th day of July 1990, ORDERED that the initial decision is modified as follows:

1. To reject the ALJ's conclusion that the respondent was disqualified from licensure pursuant to N.J.S.A. 5:12-86(c)(2) and 86(g).

2. To cite as the basis for the respondent's disqualification, his commission of acts constituting falsifying records in violation of N.J.S.A. 2C:21-4(a), and conspiracy in violation of N.J.S.A. 2C:5-2. These offenses are listed in N.J.S.A. 5:12-86(c)(1) and are, therefore disqualifying pursuant to N.J.S.A. 5:12-86(g).

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly 10/15
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4959-86
(ON REMAND CCC 7979-85)
AGENCY DKT. NO. 83-347

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
ARMOND R. DECICCO,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)
Armond R. DeCicco, respondent, pro se

RECORD CLOSED: **February 16, 1990** Decided: April 2, 1990

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, filed an Amended Complaint before the Casino Control Commission (Commission) wherein it alleges that respondent Armond R. DeCicco is alleged to have committed offenses which disqualifies him from holding a casino employee

license despite the fact that such acts were not prosecuted in the criminal courts and; that he lacks the requisite good character, honesty and integrity for licensure.

This matter originated with a Complaint filed before the Commission by the Division dated October 5, 1983, alleging that respondent was arrested and charged with falsifying or tampering with records while employed by Bally's Park Place Hotel and Casino, in violation of N.J.S.A. 2C:21-4. The Division sought the immediate suspension of respondent's casino employee license pending a license revocation hearing. On October 20, 1983, the Commission entered an order to suspend respondent's license. Subsequently, on December 12, 1985, pursuant to an application by respondent, the Commission vacated its order of suspension of October 20, 1983, and reinstated respondent's casino employee license.

On or about December 16, 1985, the matter was transmitted to the Office of Administrative Law (OAL) 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 February 3, 1986, a prehearing conference was conducted by Administrative Law Judge (ALJ) Beatrice S. Tylutki, with a hearing set down for March 14, 1986.

On March 4, 1986, the Division filed an Amended Complaint before the Commission alleging that respondent had been indicted by an Atlantic County Grand Jury on or about September 6, 1984, Indictment no. 122-84-3, on a variety of offenses alleged to have been committed by respondent while respondent was employed in the casino industry. The charges were dismissed on or about October 31, 1985.

Subsequently, the Division filed a motion before the Commission to dismiss the complaint against respondent. On July 9, 1986, the Commission denied the Division's motion and by way of an order dated July 23, 1986, transmitted the matter to the OAL for an expedited hearing.

On September 16, 1986, the matter was placed on the inactive list, pursuant to section 86d of the Act, where it remained until a prehearing held on October 24, 1989. The instant matter was heard on February 16, 1990 by the undersigned at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record closed on February 16, 1990.

ISSUES

The issues to be determined by this tribunal and as agreed to by the parties are these:

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have committed disqualifying criminal offenses, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

B. Whether respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).

C. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Act, in accordance with Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301, 313-315.

BURDEN OF PROOF

1. The Division has the burden of proving the elements of any alleged statutory disqualifier and/or inimicality by a preponderance of the credible evidence.

2. Respondent has the burden of affirmatively establishing proof of his good character, honesty and integrity by the standard of clear and convincing evidence.

UNCONTESTED FACTS

Based upon the testimony and documents proffered at the hearing, the following facts are neither contested nor in dispute. Therefore, these uncontested facts are hereby adopted as **FINDINGS OF FACT** in this matter:

Respondent, who was 34 years of age at the time of the hearing, was arrested by the New Jersey State Police (NJSP) on September 20, 1983, when he was then 28 years of age. Respondent was charged with conspiracy in violation of N.J.S.A. 2C:5-2 and falsifying records in violation of N.J.S.A. 2C:21-4, while in the employ of Caesars Hotel and Casino.

Respondent commenced employment at Caesars in 1979 as a blackjack dealer. Thereafter, he was additionally licensed for a dealer in roulette, baccarat and craps. He subsequently received an endorsement as a floorperson in blackjack, a position he held in 1982-1983. In 1982 and 1983, bus tour groups known as "superbuses" were brought to Caesars to have those individuals bussed participate in gaming activities. Mr. Albert Corbo, Atlantic Tour and Transit, Inc., Atlantic City, had an arrangement and organized a superbus junkets to Caesars. Pursuant to Count One of the State Grand Jury Indictment No. SGJ 146-85-1 (2), in which, among others, respondent is a named defendant, it alleges, in pertinent part, that:

> ... It was further a part of the conspiracy that, pursuant to the above described arrangement between ATLANTIC TOUR AND TRANSIT, INC. and Caesars, the said ATLANTIC TOUR TRANSIT, INC. would select patrons (gamblers) and approve their participation in the superbus junket program on the basis of the individual patron's ability to satisfy a financial qualification obligation related to his ability, willingness and propensity to gamble. Further, Caesars would monitor and evaluate the patrons by rating the patrons' gambling activity on a "Group Work Sheet." The coconspirators, being aware of the manner in which Caesars monitored and evaluated patrons' gambling activity, would falsely report inflated "drop" figures of the patrons on the said Caesars' "Group Work Sheet" forms. These falsifications would induce Caesars to make payment to ATLANTIC TOUR AND TRANSIT, INC., to continue the said superbus junket program arrangement, and further induce Caesars to continue the budget for the superbus program. (Indictment No. SGJ 146-85-1 (2) pp. 17-18).

Respondent testified that as a floorperson, it was his responsibility to write down the amount of money that each of the identified superbus patrons brought with them to the blackjack tables. Sometime in 1982, respondent was approached by Al Corbo who asserted that the bus patrons were not properly rated. Corbo advised respondent that if he did not start rating the bus patrons, respondent and others would find themselves out of work. Anthony (Tony) Amico, respondent's shift manager and direct supervisor told respondent to add to the amount of money the bus patron brought to the blackjack table. For example, if the patron came to the table with $300, respondent would add $200 to the rating sheet to show that the patron was playing with $500 rather than $300 in cash. Tony Amico instructed

respondent to place a cash dollar amount on a player rating sheet even though the patron arrived at the table with gaming chips. For example, respondent testified that if a player came to the blackjack table with $400 in chips and bought into the game with $200 in cash ($600), respondent would place $800 or $900 on the players rating sheet. Respondent asserted that: "Even though this player is only buying for $200 on the game, I'm showing $900 on the sheet." (TR. p. 25).

Respondent testified that falsification of player rating sheets continued for a year and a-half or maybe longer. He asserted that he received no benefits directly from either Corbo or Amico for this activity. He did, however, receive indirect benefits by way of complementary services for family members and friends. Respondent asserted that when he asked Amico for complementary dinner and show tickets for his parents, Amico would provide them. Respondent also requested complementary tickets for Caesars' Super Bowl Party for a Hammonton detective and police officers which Amico provided. Respondent asserted that he believed Amico provided the requested comps because respondent falsified the Corbo bus patron player rating sheets.

Respondent testified that he falsified the player rating slips to advance his position within the Caesars organization. He believed that as long as his boss wanted him to falsify the player rating slips, he did not believe there was anything wrong. If respondent could do it, perhaps it would help him to advance in the organization in the long run. Respondent asserted that he did not believe what he was doing was wrong because, as it was explained to him, 90 percent of the other floor people were not rating the Corbo bus patrons.

Respondent was terminated from his job on September 14, 1983, as a consequence of his activity with the player rating slips. Subsequent to Indictment SGJ 146-85-1 (2), respondent applied for and was accepted in the Mercer County Pretrial Intervention Program (PTI). On July 11, 1989, he successfully completed the PTI and the charges against him were dismissed (P-1).

Respondent has been involved with the criminal justice system on other occasions. On or about November 15, 1985, he was arrested on a charge of Shoplifting in violation of N.J.S.A. 2C:20-11. The offense was committed at Eckerd Drugs, Route 30, Hammonton, New Jersey, where he shoplifted a tube of Clearasil

valued at $4.79. Respondent was fined $50 with $25 in court costs and a penalty of $25 to the Violent Crimes Compensation Board (VCCB). On another occasion, and while he was still participating in the PTI program, respondent was induced to help a fellow worker deliver a tractor, known to be stolen, to a buyer. Respondent testified that while he was employed part-time at Parker's Farm and Gardening Supply, Hammonton, New Jersey, a fellow employee:

> ... told me he had somebody he could sell a hot tractor to and he wanted me to go with him and help him deliver it. I went with him just to help him deliver it. When I got in the truck, in the truck with him, the state police came over and arrested us. And what they wanted, they wanted information about somebody gambling that I knew, that somebody was gambling where I worked ....
>
> .... Whitehall Labs. And I gave him the information that they wanted and they dismissed the charge against me and the person that I gave the information is in jail. ... (TR 40).

Respondent testified that the NJSP advised the PTI officer that it would not press charges against respondent on the stolen tractor charge because of his cooperation with the illegal gambling investigation. Respondent asserted he was not involved in the illegal gambling operation although he placed a couple of $50 bets with the individual he targeted to the NJSP.

DISCUSSION AND CONCLUSION

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 respondent DeCicco's conduct during 1982-1983 of conspiracy and falsifying patron rating sheets while employed in the casino industry as a casino floorperson was inimical to the Act, notwithstanding that he was neither prosecuted nor convicted of the criminal offenses for which he was indicted.

Disqualifying Offense Under Section 86c (2) of the Act

Section 86c (2)of the Act is commonly referred to as the "inimical clause." In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License (Resorts), Casino Control Commission No. 79-CL-1 (February 26, 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 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 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.

In the matter of Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 at 313, the Commission quoted from Resorts and the criteria for determination as to whether an offense is inimical to the Act. The Commission continued to hold in Davis that rehabilitation under sections 90h and 91d of the Act do not apply to disqualifying convictions under section 86c (4) (now section 86c (2)). However, many of the factors of these two sections of the Act are to be considered within the inimical analysis. Those enumerated factors in section 90h, which apply to a claim of rehabilitation by a casino employee license applicant, are as follows:

(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 (licensee) 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 recommendation of persons who have or have had the applicant under their supervision.

In consideration of these inimical factors and the herein record the following is found:

First, respondent seeks to retain his casino employee license which permits him to deal in blackjack, roulette, baccarat and craps as well as perform as a floorperson in blackjack. He has not, however, been employed in the casino industry since September 14, 1983, the date of his termination with Caesars.

Second, the offenses to which respondent admits are serious. His conduct of entering into a conspiracy with his supervisor to falsify better rating slips for the benefit of a junket enterprise deprived his employer of a true and accurate accounting of the junket group ratings. Respondent knowingly caused false entries to be made on the group betting rating slips with the purpose to defraud and injure his employer, Caesars; and to ingratiate himself with his supervisor for self promotion.

Third, respondent was induced to commit the offenses by his supervisor, a shift manager in the employ of Caesars, and by a veiled threat from Albert Corbo, the operator of a junket enterprise. Mr. Corbo asserted that respondent could lose his job by not cooperating with the conspiracy because there would be less patrons

visiting the casino. Although respondent derived no direct benefit from the conspiracy, he received indirect benefits by way of complementary dinners, shows and other special events for his parents and friends. He also joined into the conspiracy with the belief that his cooperation would benefit him with promotions in the casino industry in the future.

Fourth and fifth. The offenses occurred over a period of between 18 months and 24 months in 1982-1983. Respondent was 27 and 28 years of age respectively. He was no mere youth at the time the offenses were committed.

Sixth and seventh. The offenses having been committed over an extended period of time demonstrates that there was a repetition of respondent's conduct and that it was not an isolated event. There were no social conditions which may have or did in fact, contribute to the offenses.

Eighth. Although respondent can demonstrate he completed his required PTI program, he fails to show he is rehabilitated. In fact, the opposite is shown on the record; i.e., while not yet released from his PTI program, respondent is persuaded to aid a fellow worker to deliver a stolen tractor to a potential buyer. Respondent was not duped nor forced to engage in this activity but rather, volunteered when asked by the thief. Not only did respondent fail to refuse to participate in the illegal delivery but he also failed in his duty to report the theft. Respondent's actions fails to demonstrate any evidence of rehabilitation.

Having carefully considered the entire record before me, I **CONCLUDE** that the Division has carried its burden of proof, by a preponderance of the reliable and credible evidence. It has clearly demonstrated that respondent's conduct of falsifying player betting rating slips while in the employ of Caesars as a floorperson is inimical to the policies of the Act and, thus, to the gaming industry. I further **CONCLUDE** that such conduct disqualifies respondent from holding a casino employee license, pursuant to N.J.S.A. 5:12-86c(2) and 86g.

Good Character, Honesty and Integrity as Required by Section 89b(2) of the Act.

Pursuant to N.J.S.A. 5:12-89b(2), respondent is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of

the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra, In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that respondent possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Respondent produced no evidence, by way of documents or testimony, to establish his good character, honesty and integrity, although he was given explicit instructions at the prehearing conference as to how to meet his burden Respondent, who was willing to jeopardize his future by engaging in the disposition of stolen property while enrolled in PTI, does not give rise to a finding that he possessed good character or honesty or integrity. I can only **CONCLUDE**, therefore, that respondent has failed to meet his burden, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for continued licensure in the casino industry.

I **CONCLUDE**, therefore, that respondent is disqualified from continued licensure by virtue of his failure to affirmatively establish his good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2).

ORDER

Accordingly, it is hereby **ORDERED** that the casino employee license no. 02418-21 issued to and held by Armond R. DeCicco be and is hereby **REVOKED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

2 April 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

4/4/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 4 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Armond DeCicco

For the Respondent:

Armond DeCicco

EXHIBIT LIST

For the Petitioner:

P-1 Indictment

For the Respondent:

R-1 Letter

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-94 and
88-CSI-18
LICENSE NOS. 18-11, 504-60,
38-60
OAL DOCKET NO. 07445-89
ORDER NO. 90-40-3

APPLICATIONS OF PETER G. DEMOS, JR. FOR RENEWAL OF HIS GAMING SCHOOL INSTRUCTOR AND CASINO KEY EMPLOYEE LICENSES	:	
AND	:	
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	ORDER
PETER G. DEMOS, JR.	:	
Respondent.	:	

A hearing 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; and exceptions and replies having been filed; and the Commission having considered the entire record of these proceedings at its public meetings of September 5 and October 10, 1990,

IT IS on this 13th day of November 1990, ORDERED that the initial decision is modified as follows:

(1) to reject the ALJ's finding that Peter G. Demos, Jr. could not and did not violate the regulations cited in Count IV, paragraph 10 and Count V, paragraph 11 of the complaint because the student-teacher ratios central to the alleged violations were rules

which were required to be adopted in accordance with the Administrative Procedures Act. This ruling misperceives the nature of the violation. Demos and Casino Schools, Inc. were required to obtain approval of student-teacher ratios for each course offered. Neither he nor it obtained such approvals for the classes at issue here and therefore N.J.A.C. 19:44-8.2(a)(13) and -8.5 were violated.

(2) to reject the ALJ's conclusion that the respondent has established his good character, honesty and integrity as required by N.J.S.A. 5:12-89(b)(2). The record clearly establishes that Demos knowingly made numerous false and inaccurate filings to the Commission. Given the seriousness of the transgressions, the evidence favorable to Demos, although substantial, does not clearly and convincingly establish that he has the requisite good character, honesty and integrity required for licensure as a casino key employee.

(3) The $1,000 penalty recommended by the ALJ is a reasonable penalty for all the violations committed by the respondent. The regulatory provisions violated by respondent Demos are: N.J.A.C. 19:44-8.2(a)(13),-8.3, -8.4, -8.5, -18.1(a), and -18.1(b).

IT IS FURTHER ORDERED that the applications of Peter G. Demos, Jr. for renewal of his gaming school instructor and casino key employee licenses are denied; and

IT IS FURTHER ORDERED that the resident director license of Peter G. Demos, Jr. is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that Peter G. Demos, Jr. is prohibited from reapplying for or obtaining 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.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7445-89

(ON REMAND CCC 8330-88)

(ON REMAND CCC 8692-87)

AGENCY DKT. NOS. 88-CSI, 88-94

PETER G. DEMOS, Jr.,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent,
and
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
PETER DEMOS, JR.,
Respondent.

Alfred J. Bennington, Jr., Esq., for petitioner-respondent (Bennington & Williams, attorneys)

Wendy Alice Way, Deputy Attorney General, for respondent-petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: April 27, 1990 Decided: June 20, 1990

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter was originally opened before the Casino Control Commission (Commission) on a complaint filed by the Division of Gaming Enforcement (Division) dated October 5, 1987, seeking sanctions against Casino Schools, Inc., (CSI), a gaming school; Peter G. Demos, Jr., the resident director of CSI; and Rosemary Monacello, an administrative employee of CSI. The Division also filed a letter with the Commission, dated October 5, 1987, recommending that a hearing on the renewal of CSI's gaming school license be had together with Peter G. Demos' application for renewal of his license as Resident Director of CSI and Rosemary Monacello's qualifications for future licensability in the casino industry.

On December 28, 1987, the matter was transmitted to the Office of Administrative Law (OAL) 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. (OAL DKT. NO. CCC 8692-87). Subsequently, the Honorable Jeff Masin, ALJ, issued an initial decision incorporating three separate stipulations of settlement entered into by the Division, CSI, Peter G. Demos, Jr., and Rosemary Monacello. On November 9, 1988, the Commission issued an Order accepting the stipulations of settlements pertaining to CSI and Rosemary Monacello which, among other things, granted the renewal application of CSI for its casino service industry license through the period ending June 11, 1988 and ordered CSI to pay a civil penalty of $25,000. The Commission ordered Rosemary Monacello to pay a civil penalty in the amount of $750, together with a reprimand for violating certain casino regulatory provisions. The Commission further ordered that Judge Masin's initial decision be modified to reject the proposed settlement between the Division and Peter G. Demos, Jr., with an order that the matter be remanded to the OAL.

On September 20, 1989, the Commission issued a subsequent order rejecting a stipulation of settlement entered into between the Division and Peter G. Demos, Jr., as incorporated in an initial decision issued by the Honorable Jeff Masin, ALJ (OAL

DKT. NO. CCC 8330-89). The Commission further ordered the matter be remanded to the OAL for further proceedings regarding Mr. Demos' qualifications as a resident director, gaming instructor and key employee pursuant to the issues raised by the Division in its complaint and letter-reports to the Commission.

The remanded matter was transmitted to the OAL on September 29, 1989, where it was assigned OAL DKT. NO. CCC 7445-89. Subsequently, on November 14, 1989, the undersigned conducted a prehearing conference with the Deputy Attorney General and counsel for the respondent at which, among other things, the issues to be determined were identified and eight (8) hearing dates were established in the months of March and April 1990. The record opened on March 16, 1990 with the hearing record closed on April 27, 1990, upon receipt of the hearing transcripts.

ISSUES

The issues to be determined by this administrative tribunal, as agreed upon at the prehearing conference, and as set forth in the Division's complaint and letter report, are these:

I. Complaint

A. Count I

Whether Respondent Demos, in his capacity as Resident Director, violated N.J.A.C. 19:44-8-3 by failing to assure that the minimum hours of training and instruction were provided prior to their graduation from CSI to the students aforedescribed in paragraphs 12 and 14 of this Count?

B. Count II

Whether, by certifying to the Commission that said students identified in paragraphs 12 and 14 of Count I had properly completed the said courses or programs of instruction even though said students did not in fact receive the requisite minimum number of hours of training and instruction as required by N.J.A.C. 19:44-8.3, Respondent Demos, in his capacity as Resident Director, violated N.J.A.C. 19:44-8.4?

C. Count III

Whether Respondent Demos, in his capacity as Resident Director, failed to maintain accurate permanent records in violation of N.J.A.C. 19:44-18.1(b) by maintaining permanent records recording those

students identified in paragraphs 12 and 14 of Count I showing that said students received the minimum number of hours of training and instruction required by N.J.A.C. 19:44-8.3 even though said students did not receive the requisite minimum number of hours of training and instruction as required by N.J.A.C. 19:44-8.3?

D. Count IV

Whether Respondent Demos, in his capacity as Resident Director, permitted CSI to exceed the maximum number of instructor/student ratios as aforedescribed in paragraphs 4 through 8 of this Count and thereby violated N.J.A.C. 19:44-8.2(a) and 8.5?

E. Count V

Whether Respondent Demos, in his capacity as Resident Director, violated N.J.A.C. 19:44-8.2(a), 8.4 and 8.5 by exceeding the maximum number of instructor/student ratios established by the Commission as aforedescribed in paragraph 4 of Count IV and by misrepresenting compliance therewith through the filing of the false and inaccurate information with the Commission as aforedescribed in paragraph 5 through 10 of the Count?

F. Count VI

(1) Whether, by failing to maintain accurate daily attendance sheets as aforedescribed in paragraphs 4 and 6 of this Count, Respondent Demos, in his capacity as Resident Director, violated N.J.A.C. 19:44-18.1(a)?

(2) Whether, by failing to maintain accurate permanent records as aforedescribed in paragraphs 5 and 8 of this Count, Respondent Demos, in his capacity as Resident Director, violated N.J.A.C. 19:44-18.1(b)?

II. Letter Report

A. Respondent Demos

(1) Whether Respondent Demos' execution of his duties as Resident Director, administration of the day-to-day operations of CSI, and implementation of systems to ensure that CSI's operation remained in overall compliance with the Act and regulations promulgated thereunder:

(a) adversely impact upon the Respondent Demos' reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)2?

(b) negatively impact upon Respondent Demos' business ability pursuant to N.J.S.A. 5:12-89(b)3?

(2) Whether the Commission has jurisdiction to render a decision as to the suitability of licensure where the licensee no longer seeks a renewal of that license and where that license has now lapsed?

ORDER OF PROOFS AND BURDEN OF PERSUASION

A. The State has the burden of proof, by a preponderance of the credible evidence, with respect to Counts I through VI.

B. Respondent has the burden of affirmatively establishing proof of his good character, honesty and integrity and his business ability by clear and convincing evidence.

C. Respondent has the burden of proof, by the standard of a preponderance of the credible evidence, with regard to the Commission's jurisdiction for non-renewal of license and/or lapsed license.

STIPULATIONS

The following stipulations are set forth on the record by the parties and are hereby adopted, by reference, as **FINDINGS OF FACT** in this matter. The stipulated counts in the complaint are annexed hereto together with the exhibits referenced therein.

COMPLAINT

Count I

The parties stipulate to paragraphs one (1) through and including paragraph sixteen (16). The Division has agreed, without objection from respondent, to withdraw any and all allegations pertinent to Veronica Jamison and Rafael Mora.

Count II

The parties stipulate to the allegations set forth in paragraphs one (1) through and including paragraph eight (8).

Count III

The parties stipulate to the allegations in paragraph one (1) through paragraph three (3).

Count IV

The parties stipulate to the allegations contained in paragraphs one (1) through and including paragraph nine of Count IV of the Division's complaint. Respondent Demos does not stipulate to paragraph ten (10) of Count IV, which reads as follows:

> 10. In his capacity as Resident Director, Respondent Demos permitted Respondent CSI to exceed the maximum number of instructor/student ratios as aforedescribed in paragraphs 4 through 8 of this Count and thereby violated N.J.A.C. 19:44-8.2(a) and 8.5.

Count V

The parties stipulate to the allegations set forth in paragraphs one (1) through and including paragraph ten (10). Respondent does not, however, stipulate to paragraph eleven (11) of Count V, which provides as follows:

> 11. Respondent, CSI; Respondent Demos, in his capacity as Resident Director, and Respondent Monacello, in her capacity as an administrative employee, violated N.J.A.C. 19:44-8.2(a), 8.4 and 8.5 by exceeding the maximum number of instructor/student ratios established by the Commission as aforedescribed in paragraph 4 of Count IV and by misrepresenting compliance therewith through the filing of the false and inaccurate information with the Commission as

aforedescribed in paragraphs 5 through 10 of this Count.

Count VI

The parties stipulate to the allegations set forth in paragraphs one (1) through paragraph ten (10).

As to Counts IV and V, respondent stipulates to the facts set forth therein. However, he argues that those facts, standing alone, do not constitute any violation of the administrative code nor any properly promulgated regulation. Respondent contends that he cannot be held liable for violations of regulations that were not properly promulgated as required by the Administrative Procedure Act (APA), the OAL Rules, and as determined by our Supreme Court in Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313 (1984).

TESTIMONIAL AND DOCUMENTARY EVIDENCE WITH REGARD TO PARAGRAPH 10 OF COUNT IV AND PARAGRAPH 11 OF COUNT V

Rosemary Monacello, Director of Student Services and Office Manager of CSI, testified on behalf of the Division. Ms. Monacello has been employed by CSI for nine years and reports directly to the Resident Director (R.D.) of the school. She reported directly to respondent Demos when he held the position of R.D. of CSI. As part of her duties under respondent Demos, Ms. Monacello scheduled blackjack and craps classes from six months to one year in advance of the class being offered. She was responsible for making bank deposits, supervised the record keeping of the school and its general office management. She would also provide orientation to instructors employed by CSI in the absence of respondent Demos. Ms. Monacello worked from 9:00 a.m. until 5:00 p.m., Monday through Friday.

Ms. Monacello asserted that CSI was required to keep an Actual Report and a Graduation Report, both of which were filed with the Commission. The Actual Report is sent to the Commission's Affirmative Action monitor approximately four days subsequent to the beginning of a class. The Actual Report consists of, among other things, data concerning students enrolled in a class and a description of the class offered. The Graduation Report consisted of, among other things, the type of

class provided, the instructor's name, the required number of hours completed by the student, the tuition paid in full and the successful completion of a student audition by the instructor.

In 1986-87, a sign-in sheet was provided to the instructors where the student would sign his or her name each day of attendance at class. The sign-in sheet would show the hours each day a student appeared for class and formed the basis of calculating the students hours for graduation.

Ms. Monacello testified that on two occasions, in or about 1986, two instructors were scheduled to teach separate classes with two sign-in sheets for the students. There were 18 or 20 student names listed on the sign-in sheets when the two classes were to begin. However, all of the students enrolled did not appear and, therefore, one instructor assumed the responsibility for the total student body of the combined classes and conducted one class. The Actual report filed with the Commission's Affirmative Action monitor indicated two classes taught by two instructors. The Graduation Report filed with the Commission indicated two instructors taught the classes to comport with the Actual Report, when only one instructor taught one combined class.

Ms. Monacello testified that when she noticed that the Graduation Report did not comport with the Actual Report, she confronted respondent Demos with the discrepancy. She told Demos that only one instructor had taught the class while the Actual Report was submitted with two instructors names listed. Ms. Monacello testified that Demos "...just thought it was insignificant and ... to let it go." As a consequence, Ms. Monacello filed an incorrect Graduation Report with the Commission.

Ms. Monacello testified that the last day of class instruction was to be counted as five (5) hours toward the total number of hours required for the completion of gaming instruction for licensure. She asserted that soon after the instructors submitted their individual student sign-in sheets, which occurred prior to the start of the class, the instructors were issued the students diplomas and graduation certificates. She testified that in some instances, the instructors then issued diplomas and graduation certificates to the students without conducting further classroom instruction on the last day of assigned class. The students, therefore, received

diplomas and/or certificates attesting that they each had completed the minimum hours of training and instruction when, in fact, they had not.

On cross-examination, Ms. Monacello testified that since the schools opening approximately 10,000 students had graduated from CSI. She filed, on average, between 40 and 45 Actual Reports and Graduation Reports with the Commission each year. During the nine years that Ms. Monacello was employed by CSI, she filed, conservatively, 360 Actual and Graduation Reports with the Commission and only one Actual Report was called into question as to its accuracy or validity.

Ms. Monacello asserted that other than the four named students in the Division's complaint, she knew of no other students who were granted credit for making up hours they were absent from class when, in fact, the students had not made up for the absent class time. Similarly, she testified that other than the six named students in the Division's complaint, Ms. Monacello knew of no other students who were given credit for hours of instruction where, in fact, the students did not actually receive the hours of instruction reported. These were the only regulatory violations that she was aware of that had been committed by CSI during the period she had been employed at the school.

Ms. Monacello testified, among other things, that during respondent Demos' tenure at CSI, she dealt with Demos on a day-to-day basis and that he had never asked her to do anything, directly or indirectly, that she would consider to be immoral or dishonest. She opined that Demos possessed good character, honesty and integrity. Even after the Division had filed its complaint with the Commission, which placed her license and the license of Demos and CSI in jeopardy, Demos did not request Ms. Monacello to do anything other than to tell the truth. Monacello opined that respondent Demos was a promoter for CSI rather than a hands-on-administrator; i.e., he was a figurehead president who generated business rather than administer the institution on a day-to-day basis.

James Joseph Dickey was called and testified on behalf of the Division. Mr. Dickey is presently employed by Resorts International Hotel and Casino as a full-time pit boss with the games of roulette, blackjack, baccarat and mini baccarat. He is licensed by the Commission holding a key license in the games in which he serves as a full-time pit boss. He also holds instructor licenses in the games of roulette,

blackjack and baccarat. It was under his instructor's license that he taught classes in baccarat at CSI in February and September of 1986 when respondent Demos was its R.D.

Mr. Dickey testified that he was hired to teach 80 hours of baccarat to licensed dealers and floorpersons as a second or subsequent game. There were between 30 and 35 students enrolled in his class. Mr. Dickey approached Ms. Monacello to express his concerns about the large class and offered to locate another instructor to help him teach the class. Ms. Monacello asserted that several of the enrollees would drop out of the class, therefore, another instructor was not necessary. Mr. Dickey next approached respondent Demos who stated the same position as Ms. Monacello, asserting that an additional instructor was not necessary. Respondent Demos did, however, offer Dickey more money to teach the large class, which Dickey accepted.

Mr. Dickey testified, among other things, that he was to offer 80 hours of instruction to the students enrolled in his class. The last day of classroom instruction, which was to account for five of the 80 hours, was devoted to a review of the final test for the course, after which he and the students celebrated with a graduation party. Mr. Dickey asserted that he did not teach the full five hours of the last scheduled day of class. He opined that a graduation party was a common practice on the last day of scheduled classes at CSI.

On cross-examination, Mr. Dickey admitted he did not know what was common practice at the school regarding the last day of scheduled class other than the two classes he taught. He also admitted that he allowed a student to leave his class for a doctor's appointment and did not require the student to make up the missed time. Mr. Dickey was not cited by the Division for violations of the casino regulations for these two events.

Mr. Dickey asserted that respondent Demos did not attempt to pay Dickey off to keep quiet about large classes at the school when Demos offered Dickey additional compensation to teach the class. The extra money was offered to Dickey because he would have to do more work than the original agreement provided. Mr. Dickey asserted that respondent Demos never exhibited any evidence that he lacked good character or integrity, or that he was dishonest.

The Division moved into evidence, without objection, exhibits marked J-1 through J-25. It asserts that Exhibit J-2 demonstrates that James Dickey and Steve Kuriscak were reported as the instructors for two (2) baccarat classes to be conducted from September 8, 1986 through October 6, 1986. The CSI attendance records indicated that 21 students were listed for the first day of class and assigned to Kuriscak. Eleven of the 21 students appeared. The attendance records listed Dickey with 24 students where 21 appeared. On September 11, 1986, the attendance sheets were changed by assigning 17 students to each of the instructors listed on separate attendance sheets. There was only one baccarat class of instruction at CSI between September 8, and October 6, 1986, and it was taught by Dickey.

The Division contends that the record demonstrates that four students were graduated from CSI who did not meet the minimum required hours of training and instruction because of absences. None of the four students made up the class time missed. It asserts that six students were absent from their regularly scheduled classes and subsequently reported to CSI, however, they too did not receive the minimum hours of training and instruction as required by the regulations. Students who made up class time because of absence often made up the time without benefit of an instructor (J-2, J-3, J-4).

The Division contends that exhibit J-9 shows that eight students were certified by respondent Demos as having completed the requisite minimum number of hours of training and instruction, where the evidence demonstrates (J-2, J-3, J-4) that none of the eight students received the minimum hours of training and instruction reported. The certification entitled the eight students to a grant of licensure in games listed. In support of its contention, the Division relies upon Exhibits J-5, J-9 and J-21 which include, among other things, student permanent records.

The Division asserts that respondent Demos, in his capacity of R.D., violated N.J.A.C. 19:44-8.2(a) and 8.5 when he permitted CSI to exceed the maximum instructor/student ratios. The Division relies, in part, upon Exhibit J-14 in evidence which is a letter to respondent Demos from the Commission dated December 1, 1980 and states, in pertinent part, as follows:

At the public meeting of November 26, 1980 the Commission issued a Certificate of Operation to Casino Schools, Inc., authorizing the commencement of gaming school operation at 1923 Bacharach Boulevard, Atlantic City, NJ and the public offering of primary and secondary courses or programs of instruction in dealing techniques in the games of Blackjack, Craps, Roulette and Baccarat.

This Certificate and authorization were made specifically subject to the licensee's compliance with conditions #1-3 as set forth on page two (2) of the Staff Report dated November 26, 1990. Additionally, all approved courses or programs of instruction to be offered by Casino Schools, Inc. shall at all times conform to the following maximum ratios, as adopted by the Commission.

Maximum Ratios

Courses	Student/Table	Instructor/Table	Instructor/ Student	
Blackjack	5 to 1	1 to 5	1 to 20	
Craps	8 to 1	1 to 2	1 to 16	
Baccarat	9 to 1	1 to 2	1 to 18	
Roulette	8 to 1	1 to 2	1 to 16	
Big 6	8 to 1	1 to 2	1 to 16	(J-14)

The Division contends that CSI's attendance sheets (J-21) and its compilation of statistics derived from those attendance sheets (J-10), demonstrate that from March 10, 1986 to November 4, 1986, CSI exceeded the maximum instructor/student ratio established by the Commission in 12 blackjack courses of instruction. It asserts that from March 10, 1986 to April 7, 1987, CSI exceeded the maximum instructor/student ratio in five craps courses. The Division submits that from February 3, 1986 to October 20, 1986, CSI exceeded the maximum instructor/student ratio in five baccarat courses and, from March 3, 1986 to December 1, 1986, it exceeded the maximum in four roulette courses.

The Division asserts that notwithstanding its letter notice to respondent setting forth the maximum instructor/student ratios for the various courses taught at CSI, respondent continued to exceed the established ratios in classes conducted during March and April 1987. The Division conducted a routine spot inspection of CSI on March 17, 1987 and determined that a craps course instructed b y Bill Belzner listed 23 students on the attendance sheet, with 19 present and under instruction. The Division's inspector noted that CSI was allowed 16 students per instructor as the maximum enrolled in a craps class (J-7). Similarly, in a spot inspection conducted on

April 29, 1987, when two blackjack and one craps class was monitored by the Division's inspector, the inspector noted, among other things, that it appeared that two craps classes (201 and 202) may have been combined to form one class of 25 students (J-8). The Division again contends that the maximum instructor/student ratio for CSI craps classes was 1 to 16 on April 29, 1987.

The Division contends that CSI's July 31, 1986 Graduation Class and Report for blackjack was false and inaccurate where it listed the classes as having been taught by Peter Demos, Sadie Jones and Beryl Tweedle (J-20). The Division asserts that respondent Demos did not teach a blackjack class between June 9 and July 31, 1986, as submitted in the Report (J-20). Blackjack 101 was taught as two, rather than three classes, by instructors Sadie Jones and Beryl Tweedle. Sadie Jones taught the course which enrolled 48 students and graduated 34 students. The Division claims that the established instructor/student ratio's for blackjack was 1 to 20; therefore, CSI exceeded the maximum student enrollment for instruction in this class.

Respondent Demos admits to the regulatory violations that certain students did not complete the required minimum hours of instruction in courses offered by CSI for casino employee licensure, while respondent served as CSI's R.D. Although respondent Demos is and was unaware of the names of the ten (10) students identified by the Division or the circumstances as to why they each did not complete the required minimum hours of instruction at CSI, he admits to the regulatory violations because he has no way to refute the Division's allegations. Respondent contends that only ten (10) students found to have been short of the required minimum hours of instruction out of some 10,000 certified graduates from CSI was a minimal offense, yet it has been very costly to him and his career in the casino industry. Nevertheless, when Demos was advised of the alleged violations by the Division's investigator, respondent took immediate action to correct the alleged irregularities (J-15). Respondent contends that he received no benefit, monetary or otherwise, as a consequence of these few students' failure to complete the required minimum hours of instruction at CSI. He testified that he terminated certain teaching staff members when he learned they were not providing the requisite number of hours for licensure.

Respondent Demos does not admit to any violation of the regulations with regard to student/teacher ratios provided at CSI while he was its R.D. He contends

that the administrative regulations specifically sets forth the required minimum hours of instruction to be provided students in each gaming course, however, there are no specific teacher/student ratios for the courses of instruction set forth in the regulations. Respondent Demos maintains that the Division's investigation in 1986 was the first time any reference to teacher/student ratios was brought to his attention. He does not recall receiving J-14, the letter dated December 1, 1980, addressed to him from the Commission, He contends that it was his understanding that the teacher/student ratios were established by the ability of the individual instructor to handle a given number of students and the physical facilities (tables) the instructor was able to work with.

Respondent Demos asserted that CSI could not continue as a viable enterprise under the restrictive teacher/student ratios as suggested by J-14. He asserted, for example, that the letter provides for only 16 students as the student/teacher ratio for instruction in a craps class. Sixteen people might show up for the first class, however, after one week, the class might be down to an enrollment of 12 or 13 students. By the time the class of instruction is completed, only eight (8) or nine (9) students might graduate. Demos maintained that the school would not have collected enough money in tuition payments to pay the cost of the instructor under such circumstances. He asserted that the school would have been bankrupt in two months if it was required to comply with such ratios.

Respondent Demos testified that subsequent to the Division's investigation of CSI in 1986, he conducted a search for J-14 in the schools then attorney's files. After an intensive search, Demos located the letter which, he maintains, was the first he learned of any suggested or regulated maximum teacher/student ratios for the instruction in the various gaming classes.

Respondent Demos asserted that once the teacher/student ratio problem was brought to his attention in 1986, and under advice of counsel, he immediately petitioned the Commission to increase the teacher/student ratios to the levels reflected in CSI's records. This was for the purpose, among other things, of protecting those individuals who had graduated and been certified by CSI. Demos asserted that its petition was granted by the Commission.

Respondent Demos maintains that from December 1980 up to and including 1986, the Division's and Commission's inspectors were present and on CSI's site on a regular basis. In fact, many times the Division and Commission sent individuals to CSI's classes for training. These Division and Commission staff members were in classes which exceeded the maximum teacher/student class ratios as expressed in J-14. No warning or complaint was issued from either the Division or the Commission.

While respondent Demos admits that J-14 existed and that the letter (J-14) required certain teacher/student ratios, he does not admit to any regulatory violations or noncompliance because there were no adopted or promulgated regulations to which he or CSI were required to comply.

The parties stipulated that respondent Demos cooperated with the Division and did not interfere with its investigation.

Seven witnesses testified on respondent Demos' behalf with regard to his good character, honesty and integrity. They were: Thomas A. Olah, Senior Gaming Inspector, New Jersey Casino Control Commission; John A. Clement, III, President and General Manager, Gold and Tennis World, 405 Black Horse Pike, West Atlantic City, New Jersey; James Gulbrandsen, Director of Casino Games, TropWorld Hotel/Casino; James A. Rigot, Vice President, Casino Games, TropWorld Hotel/Casino; Robert J. Driscoll, Assistant Games Manager, Harrah's Marina Hotel/Casino; Donald C. Williams, talk show host with radio station WOND, South Jersey Broadcasting; and, Robert M. Walker, Senior Vice President, Action Savings Bank, Somers Point, New Jersey. All of the witnesses opined that respondent Demos possessed the requisite good character, honesty and integrity for licensure as a key employee in the casino industry.

FINDINGS OF FACT

Having carefully considered the entire record in this matter and having given fair weight thereto, and having observed the witnesses and assessed their credibility, I **FIND** the following **FACTS**:

Respondent Demos is presently 48 years of age and is employed as the Director of Casino Operations at the Sands Hotel/Casino, San Juan, Puerto Rico. In

March 1978, he was recruited by the Atlantic City Resorts International Hotel/Casino (Resorts), and employed as an instructor of blackjack. Prior to March 1978, he was employed by the Sahara Casino, Lake Tahoe, Nevada. Demos has been employed in the casino industry since 1963. Subsequent to his arrival in New Jersey, respondent Demos was issued casino key license no 18-11. When Resorts opened some four months later, respondent was employed as a pit boss by the casino.

On April 1, 1979, respondent Demos left Resorts with the purpose of opening his own gaming school. In or about October 1979, he was employed by Caesars Hotel/Casino (Caesars) as a pit boss. Subsequently, respondent and two partners opened CSI. The partnership consisted of respondent and Kenneth Arthur, both key licensed employees with instructors licenses and, Morgan Cashman of Photo Enterprises, Las Vegas, Nevada and Atlantic City, New Jersey. Cashman was a qualifier doing business with Atlantic City casinos and was also the "money man" for the enterprise.

During the summer of 1979, respondent Demos and Arthur were approached by representatives of the Commission to set up a training program for its inspectors. Demos and Arthur did establish a training program and Demos wrote many of the manuals for the inspectors use in checking games at the casinos and for interpreting casino rules and regulations.

Respondent was CSI's President and R.D. from December 1980 until January 1988. Demos performed as the school's public relations (PR) person. Ken Arthur handled all of the schools records, accounts, files and submission of reports and applications to the Commission. Demos delegated all of the administrative duties to Arthur although acknowledging that he, Demos, was responsible for compliance with the administrative regulations. Arthur left CSI within the first year of the school's operation and respondent Demos then elevated Ms. Monacello to the position of office administrator with all of the delegated duties and responsibilities formerly performed by Arthur. Demos was not attentive to administrative details in the daily operation of the school.* Moreover, he signed documents placed before him without a thorough review of the contents of the documents; i.e., bulk diplomas, attendance sheets, correspondence, memoranda, etc. Respondent Demos did not knowingly sign any document which he knew to be false.

Subsequent to the Division having filed its complaint with the Commission, dated October 5, 1987, alleging regulatory violations against respondent Demos, CSI and Ms. Monacello, Demos was asked by Cashman to resign as the school's R.D. and President. As a consequence of his resignation, Demos faced severe financial problems with lending institutions and the IRS and came very close to bankruptcy. Due to the nature of the Division's charges against him, Demos was unable to find work in the casino industry either in Atlantic City or Nevada. He subsequently found employment in the Commonwealth of Puerto Rico and remains deeply in debt today.

Respondent Demos admits to the Division's allegations with regard to those counts of the complaint stipulated hereinbefore. He does not admit to any violations of any regulation pertaining to instructor/student ratios.

I **FIND** the testimony of both the Division's witnesses and the witnesses produced by respondent Demos to be reliable and credible. In re Perrone's Estate, 5 N.J. 514, 522 (1950); Gilson v. Gilson, 116 N.J. Eq., 556, 560 (1934). Accordingly, I hereby **ADOPT** the proffered testimony as **FINDINGS OF FACT** in this matter.

DISCUSSION AND CONCLUSIONS

The issues now for determination are these:

Complaint

Count IV, paragraph 10.

Whether, in his capacity as Resident Director, respondent Demos permitted respondent CSI to exceed the maximum number of instructor/student ratios as aforedescribed in paragraphs 4 through 8 of this Count and thereby violated N.J.A.C. 19:44-8.2(a) and 8.5.

Count V, paragraph 11.

Whether respondent Demos, in his capacity as Resident Director, violated N.J.A.C. 19:44-8.2(a), 8.4 and 8.5 by exceeding the maximum number of instructor/student ratios established by the Commission as aforedescribed in paragraph 4 of Count IV and by misrepresenting compliance therewith through the filing of the false and

inaccurate information with the Commission as aforedescribed in paragraphs 5 through 10 of this Count.

Letter Report

(1) Whether Respondent Demos' execution of his duties as Resident Director, administration of the day-to-day operations of CSI, and implementation of systems to ensure that CSI's operation remained in overall compliance with the Act and regulations promulgated thereunder:

(a) adversely impact upon the respondent Demos' reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)2?

(b) negatively impact upon respondent Demos' business ability pursuant to N.J.S.A. 5:12-89(b)3?

(2) Whether the Commission has jurisdiction to render a decision as to the suitability of licensure where the licensee no longer seeks a renewal of that license and where that license has now lapsed?

JURISDICTION

Respondent raises the jurisdictional issue as to whether the Commission may render a decision as to the suitability of licensure where the licensee no longer seeks renewal of a license and where a license has now lapsed. The Division cites the matter of Division of Gaming Enforcement v. Ihrig, OAL DKT. NO. CCC 3180-88 (Commission Order dated December 30, 1988). The Division observes that while its complaint in Ihrig was pending, the respondent's casino license expired with no reapplication pending while the respondent's hotel registration lapsed. While the Commission voted three (3) to one (1) not to revoke respondent Ihrig's registration, and took no action on the casino license as it had expired, Chairman Read stated in his dissent as follows:

> With respect to the question of licensure, ... I would recognize that the argument ... with respect to our ability to deal with licensure if there is not a current license in being, but I would be concerned about the situation where someone who was licensed at the time the charges were brought has presumably allowed his licensure to lapse voluntarily as a possible means of avoiding implication at this time. I would agree with Judge Masin

> with going forward with the hearing as he did, when we say it's on the basis of efficiency as I think the basis that he used, the availability of the witnesses, the whole picture that way. I think he did the proper thing and the question I would find if I were to go against ... [the respondent] at this time would be simply that he is not licensable, if you will, in view of the circumstances and the time that the complaint was brought. Transcript of Commission Meeting, December 21, 1988 at 113, 11 8-25.

It is the Division's position that the instant matter may be distinguished from Ihriq on a number of grounds. First the Division's complaint was brought against respondent Demos when the respondent's licenses were current. Second, even though respondent Demos' casino key employee license expired in June 1989 with no reapplication pending, the Commission has not taken action on respondent Demos' key license for the years 1986-1988, inclusive, as reflected in the Division's letter report dated August 30, 1989, which letter report is a part of this record. Third, respondent Demos' gaming school instructor license and resident director license remain active to date. Fourth, because said gaming school instructor and resident director licenses are active, any action taken by the OAL and the Commission impacts upon the key license as a matter of law pursuant to N.J.S.A. 5:12-89 (b) incorporated by reference by N.J.S.A. 5:12-92 (a) (1) and (b).

The Division continues to argue that in the event this tribunal finds respondent Demos not to be qualified as a gaming school instructor and/or resident director, then respondent cannot be found to be qualified as a casino key employee. I disagree.

I find Chairman Read's comments significant concerning the Ihriq matter at the Commission meeting on December 21, 1988 with regard to the Commission's authority over lapsed or expired casino employee licenses. The Commission, by virtue of its broad powers under N.J.S.A. 5:12-64, possesses

> ... the power and authority to deny any application; limit or restrict any license, registration, certificate, permit or approval, suspend or revoke any license, registration, certificate, permit or approval; and, impose a penalty on any person licensed, registered, or previously approved for any cause deemed reasonable by the Commission ... (Emphasis supplied).

Section 64 of the Act grants to the Commission the authority to consider not only current applications, licenses and registrations, but also, those previously approved and which may now have expired.

I **FIND** and **CONCLUDE**, therefore, that the Commission, and derivatively the OAL, has jurisdiction to hear and determine the qualifications of respondent Demos for licensure where respondent no longer seeks a renewal of his license and where respondent has allowed a license to lapse.

COMPLAINT, COUNT IV, PARAGRAPH 10 AND COUNT V, PARAGRAPH 11

The Division alleges that respondent Demos was in violation of N.J.A.C. 19:44-8.2(a), N.J.A.C. 19:44-8.4 and N.J.A.C. 19:44- 8.5 as a consequence of respondent permitting the maximum number of instructor/student ratios to be exceeded at CSI in certain classes of instruction and by his filing of false and inaccurate information with the Commission pertaining to those instructor/student ratios. The regulations alleged to have been violated by respondent Demos are as follows:

N.J.A.C. 19:44-8.2 Outline

(a) For each course or program submitted to the Commission for approval, the gaming school shall submit a course or program outline in sufficient detail for proper evaluation which outline shall include, but need not be limited to:

1. The course or program title;

2. The objective or goal the course or program is intended to meet;

3. For courses, the content in outline form showing the major elements of items of instruction, the number of teacher contact hours of instruction for each element of the course, the number of laboratory or practice hours required and the total number of hours for the course;

4. For programs, a description of the program in outline form showing the courses or elements or items of instruction comprising the program, the number of teacher contact hours of instruction for each course or element of the program, the number of laboratory or practice hours required

and the total number of hours required for completion of the program;

5. A description of the plan of instruction to be used which shall include daily lesson plans;

6. A description of the space, equipment, tools and audio-visual material to be used for each course or program;

7. The entrance requirements, if any, such as education, physical fitness or dexterity, and the procedure for determining compliance with such;

8. The proposed tuition and other charges or cost to the student;

9. The maximum number of students that will be permitted to enroll in any one session of the course or program taking into account the facilities available;

10. The capacity of the school for any one session of the course or program showing the number of work stations in the shop or laboratory, the number of classroom spaces and the number and type of gaming tables and equipment to be utilized;

11. The nature of skill and knowledge students are expected to have upon completion of the course or program and occupational and other outcomes expected from the course or program, and the testing program to be used to test students for these competencies and the standard to be used;

12. A description of the method and frequency by which the course will be evaluated in relation to its goals and objectives.

13. The student-teacher, student-table and table-teacher ratios for each course or program; and

14. A copy of all textual material to be used in the course or program of instruction (emphasis supplied.

N.J.A.C. 19:44-8.4 Certificate

Upon satisfactory completion of any course or program of instruction, the gaming school shall, in writing, certify directly to the commission that the student has completed the said course or program of instruction.

N.J.A.C. 19:44-8.5 Standards

> No course or program of instruction shall be approved by the commission unless the commission shall have first been satisfied that the student-teacher ratio, physical facilities, equipment and classroom and laboratory space shall be such as to afford each student an adequate opportunity to determine the student's progress by testing, observation or performance. (Emphasis supplied).

In support of its allegations that respondent Demos permitted the instructor/student ratios to be exceeded, the Division relies upon Exhibit J-14 in evidence, a letter addressed to respondent Demos from Bertha L. Scott, Legal Analyst for the Commission, and dated December 1, 1980.

Respondent Demos asserts that he did not see J-14 in or about December 1980 but, rather, he first saw the document sometime in 1986 after the Division had commenced its inspection of CSI. He asserted that the letter (J-14) was located in the files of the school's then attorney after an intensive search lasting some five hours. Demos contends that he had no way of knowing of the Commission's instructor/student ratios because the ratios were not set forth in any regulation Demos maintains that between December 1980 and on or about April 1986, when the Division commenced its inspection of CSI, many members of the Division's staff and the Commission's staff had visited CSI and participated in its courses of study without advising him of the instructor/student ratios or that he had exceeded said ratios. Respondent Demos observes that the regulatory scheme clearly sets forth, at N.J.A.C. 19:44-8.3, the maximum hours of instruction required of a student in preparation to deal various games in the casinos. Notwithstanding that ten (10) of the students enrolled at CSI some how did not meet these minimum hours of instruction, the regulations, nevertheless, put respondent Demos on notice as to his obligation to satisfy the standard. He argues that no such standard exists with respect to maximum instructor/student ratios. Therefore, he contends, he committed no violation with respect to said ratios and cites Metromedia, Inc., supra in support of his position.

In Metromedia, Inc., the Director of the Division of Taxation assessed a corporate business tax on an out-of-state corporation owning five out-of-state television and radio stations. The Director allocated a factor to calculate the

stations' share of the local viewing or listening audiences and assessed a tax on the corporation. The New Jersey Supreme Court held that even though the assessment was authorized by Statute (N.J.S.A. 54:10A-8), it was invalid without a proper promulgation of rules in compliance with the Administrative Procedure Act (APA). In sum, the Court held the following:

> We can synthesize from this authority that an agency determination must be considered an administrative rule when all or most of the relevant features of administrative rules are present and preponderate in favor of the rule-making process. Such a conclusion would be warranted if it appears that the agency determination, in many or most of the following circumstances, (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. These relevant factors can, either singly or in combination, determine in a given case whether the essential agency action must be rendered through rule-making or adjudication. 97 N.J. 331-332

The Metromedia Court held that not all of the above features need to be present for an agency statement to be considered a rule. Where, as here, the Commission's maximum instructor/student ratios was one of general applicability to a regulated class (Gaming Schools), essentially prospective in nature, intending to have continuing effect and not otherwise expressly provided for by statute, nor was it clearly and obviously implied, it therefore meets the test of an administrative rule

The regulatory provisions cited by the Division in support of its allegations that respondent Demos was in violation of the Commission's instructor/student ratios (N.J.A.C. 19:44-8.2(a), 8.4 and 8.5) did not provide respondent with a sufficiently specific standard of conduct by which it was to be measured by the

Commission or the Division. While N.J.A.C. 19:44-8.2(a) 13 provides that CSI was to submit its student-teacher ratios, among other ratios, for each course or program for the Commission's approval; the Division offered no such document for this tribunal to assess whether or not respondent was aware of any established instructor/student ratios prior to 1986. Similarly, N.J.A.C. 19:44-8.5 offers little or no guidance as to what ratios, if any, were required to be provided respondent's gaming courses.

I **CONCLUDE**, as the Supreme Court did in Metromedia at 334, that, "In balancing the relevant factors before [me], [I am] satisfied that the [Commission's] determination constituted a rule, and that its adoption required compliance with statutory rule-making procedures." N.J.S.A. 52:14B-2; N.J.S.A. 52:14B-4.

I **CONCLUDE**, therefore, that respondent Demos could not, nor did he, violate the Commission's instructor/student ratios as alleged. Accordingly, Count IV, paragraph 10 and Count V, paragraph 11 of the Division's complaint are hereby **DISMISSED**.

N.J.S.A. 5:12-89B(2), GOOD CHARACTER, HONESTY AND INTEGRITY

Pursuant to N.J.S.A. 5:12-89b(2), respondent is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra, In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that

respondent possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

The Division contends that respondent Demos does not possess the requisite good character, honesty and integrity for casino key licensure as a consequence of his lack of diligence in the day-to-day administration of CSI and his failure to ensure the school's operation remained in compliance with the Act and the regulations promulgated thereunder. While respondent's lack of diligence in administration of the school may speak to his business ability, it does not necessarily hold that such lack of diligence adversely impacts upon his good character, honesty and integrity. Quite the contrary. The testimony of the witnesses extolled respondent's good character, honesty and integrity. Thomas Olah testified that "[Demos] has an outstanding character" and reputation in the casino community. Olah opined that respondent bent over backward to be in compliance with the casino rules and regulations. (TR, March 22, 1990, pp. 7,8). Mr. John A. Clement, III, testified as to respondent's good character, honesty and integrity as did James Gulbrandsen who believes that respondent has always set very high moral standards for himself and others. James Rigot found respondent to be very honorable with the utmost integrity. Robert Driscoll, Donald Wilson and Robert Walker had similar opinions concerning respondent's reputation.

There was no evidence produced to demonstrate that respondent had committed any crimes or that he had been involved in any criminal activity. The evidence produced did demonstrate, moreover, the casino community's high regard for his good reputation and his contributions to the casino industry. There was no evidence to suggest that respondent Demos was anything other than a person of good character, who is honest in his dealings with others and has the utmost integrity.

I **CONCLUDE**, therefore, that respondent Demos has met his burden of proof, by clear and convincing evidence, that he does possess the requisite good character, honesty and integrity for licensure under N.J.S.A. 5:12-89b(2). Accordingly, the Division's complaint with regard to this issue is hereby **DISMISSED**.

N.J.S.A. 5:12-89B(3) BUSINESS ABILITY

Section 89b(3) of the Act provides that:

> Each applicant shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence that the applicant has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the particular position involved.

The record shows, and respondent Demos admits, that during his tenure as President and R.D. of CSI, he functioned as its P.R. person while he delegated the day-to-day administrative operations to others. He viewed his job as being before the public, appearing on radio and television to discuss the problems and issues of the casino industry while also recruiting students for his school. The minutia of administrative detail respondent left to others. Although he was ultimately responsible for the decisions and actions of his subordinates, respondent routinely signed important documents for transmission to the Commission without first scrutinizing the contents of the documents. In addition, respondent was unaware of the practice of some of the teachers who permitted CSI students to be absent from class without making up the lost time to meet the minimum required instruction hours for licensure. He was also unaware that some teachers did not perform their duties to the full extent of the requirements by allowing students to forego instruction on the last day of class to engage in graduation celebrations. It is to respondent's credit that when he did learn of situations where teachers in his employ failed to provide their respective students with the minimum required hours of instruction, he immediately dismissed the teachers and required the students to make up the missed time.

There is no question or doubt that respondent has exhibited extensive casino experience as both a teacher and dealer of a variety of gaming activities. In fact, he is highly regarded as a teacher and expert in the field of casino games. During his tenure as President and R.D. of CSI, he saw the school grow in reputation and turn a profit for him and his partner, Morgan Cashman. It was unfortunate that respondent's other partner, Kenneth Arthur, left the school for other employment. Mr. Arthur was familiar with the casino Act and regulations and preferred working

with such administrative detail. Subsequent to Arthur's leaving CSI, respondent promoted Ms. Monacello to the position of Office Manager and delegated Arthur's duties to her. There is no evidence on this record to demonstrate that Ms. Monacello possessed the expertise of the Act and its attendant regulations as that possessed by Arthur.

It can fairly be said that, under Section 89b(3) of the Act, respondent possesses the casino experience to establish the reasonable likelihood of success for a casino gaming school. It is also obvious from the herein record that respondent Demos has failed to establish that he possesses sufficient business ability to assure the "efficient" operation component of the statutory prescription. I **CONCLUDE** that respondent Demos has failed to demonstrate, by clear and convincing evidence, that he possesses sufficient business ability to operate a casino gaming school.

ORDER

I do not conclude that respondent Demos lacks sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency for casino key licensure. I **CONCLUDE** only, that he lacks the ability to efficiently operate a gaming school. Consequently, I **ORDER** that only respondent's resident director license, number 504-60 should be **REVOKED** and that he be assessed a penalty of $1000. for the violation of N.J.A.C. 19:44-8.3 I further **ORDER** that respondent's gaming school instructor license number 38-60 and respondent's casino key employee license number 18-11 be permitted to lapse.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

20 June 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

6/25/90
DATE

Kim Wade
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 26 1990
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

INDEX OF EXHIBITS

J-1 Division Investigation Report dated November 20, 1986.
J-2 Division Investigation Report dated December 1, 1986.
J-3 Division Investigation Report dated December 8, 1986.
J-4 Division Investigation Report dated December 16, 1986.
J-5 Division Investigation Report dated January 22, 1987.
J-6 Division Investigation Report dated February 10, 1987.
J-7 Division Investigation Report dated March 17, 1987.
J-8 Division Investigation Report dated April 29, 1987.
J-9 Division Investigation Report dated August 24, 1987.
J-10 Division Investigation Report dated December 31, 1986.
J-11 Division Investigation Report dated February 21, 1989.
J-12 Sworn Interview of Peter Demos.
J-13 Sworn Interview of William Kilduff, Jr.
J-14 Letter dated December 1, 1980 from Bertha Scott to Peter Demos.
J-15 Memoranda of CSI. 1st. - In effect prior to December 15, 1986; 2nd. - Dated December 15, 1986; 3rd. - dated January 1987
J-16 Operational Audit Report of CSI dated March 18, 1986.
J-17 Letter Report dated July 8, 1986.
J-18 Letter from Vanessa Schnauffer to Mitchell Schwefel dated January 6, 1986.
J-19 Affidavit of Morgan Cashman.
J-20 Correspondence from CSI to CCC dated June 6, 1986, July 31, 1986 and October 2, 1986.
J-21 Index and Original Daily Attendance Sheets.
J-22 Letter, May 12, 1987, to Demos from Deno R. Marino, Casino Commission
J-23 February 4, 1988 letter to Demos from William H. Delaney, Casino Control Commission
J-24 Letter, August 30, 1988 to Walter N. Read from Fredric E. Gushin, DGE Re: Peter G. Demos, Jr., Renewal
J-25 Letter, October 5, 1987 to Walter N. Read from Wendy Alice Way, DGE with attachments.

P-1 Sworn Interview of Rosemary Monacello (12-9-87).
P-2 Sworn Interview of Rosemary Monacello (5-18-88).
P-3 Sworn Interview of James Dickey.
P-4 Sworn Interview of Elizabeth Rifice.
P-5 Sworn Interview of Steven Kuriscak.
P-6 Sworn Interview of Sadie Jones.
P-7 Sworn Interviews of Beryl Tweedle & Robert Jones.
P-8 Final Order and Stipulations in State v. Casino Schools Incorporated, et al., Dkt. No. 82-148.
P-9 Stipulation of Settlement in State v. Rosemary Monacello, (w/o Exhibits).

The Division's exhibits P-28 and P-29 are Identification Only

P-28 Stipulation of Settlement in State v. CSI (w/o Exhibits).
P-29 Documents supplied to the Division by Larry Horowitz (CSI accountant) through Joseph Fusco, Esquire (CSI attorney), used in the compilation of the chart attached to and referenced in Division Investigation Report dated February 21, 1989 (DAG-11).

WITNESS LIST

For the Petitioner:

Rosemary Monacello
James Dickey
Peter G. Demos, Jr.

For the Respondent:

Peter G. Demos, Jr.
Thomas A. Olah
John A. Clement, III
James Gulbrandsen
James A. Rigot
Robert J. Driscoll
Donald C. Williams
Robert M. Walker

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-44
LICENSE NO. 000840-11
OAL DOCKET NO. CCC 07263-89
ORDER NO. 90-33-10

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

Complainant,

v.

JEAN ANN DEGRAW,

Respondent.

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; and the Commission having considered the entire record of these proceedings at its public meeting of August 15, 1990,

IT IS on this 5th day of September 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the Commission's order of September 3, 1987, suspending the respondent's casino key employee license is vacated; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly 24 A.
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7263-89

AGENCY DKT. NO. 88-44

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

JEAN ANN DEGRAW,

Respondent.

R. Lane Stebbins, Deputy Attorney General, on behalf of the petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Jean Ann DeGraw, respondent, pro se

Record Closed: March 22, 1990 Decided: July 11, 1990

BEFORE **RICHARD J. MURPHY**, ALJ:

STATEMENT OF THE CASE, ISSUES AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) has filed a complaint with the Casino Control Commission against Jean Ann DeGraw, a key licensee pursuant to N.J.S.A. 5:12-86, 89-91, 197-198, 129-130, seeking to revoke her key employee license. Respondent currently holds casino (key) employee license number 840-11 and is not now employed in the casino industry. On or about July 14, 1982, respondent was arrested and charged with conspiracy, theft of services, and computer related theft, contrary to N.J.S.A. 2C:5-2, 2C:20-25(c) for alleged conduct while working as a pit boss at the Atlantis Casino/Hotel. The criminal charges were unconditionally dismissed, after being reduced to the misdemeanor of theft.*

---

*The Commission filed this matter with the Office of Administrative Law on September 25, 1989, for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq., a prehearing was held on January 2, 1990, and a plenary hearing held in Absecon on March 22, 1990, at which time the record closed. The due date for submission of the intial decision was extended for good cause not related to this case as set forth in an Order of Extension. I regret any hardship or inconvenience that this delay may have caused the parties.

The following issues are to be resolved:

(1) Whether the key licensee is disqualified from holding a license under N.J.S.A. 5:12-86c(1), because of commission of acts constituting the offense of theft notwithstanding that these acts or conduct have not or may not be prosecuted under the criminal laws of the state as provided by N.J.S.A. 5:12-86g or are the subject of a current prosecution or pending charges pursuant to N.J.S.A. 5:12-86d.

(2) Whether the key licensee is disqualified from holding a license under N.J.S.A. 56:12-86c(2) and 86g for commission of the offense of falsification which indicates that licensure would be inimical to the policies of the Casino Control Act and casino operations in the state of New Jersey under subsection c(2) even if this conduct has not or may not be prosecuted under the criminal laws of the state or pursuant to N.J.S.A. 5:12-86d is the subject of current prosecution or pending charges for an offense included within section 86c.

(3) Whether the key licensee can demonstrate by clear and convincing evidence that she possesses the requisite good character, honesty and integrity required by N.J.S.A. 5:12-89b(2), and 90b, considering the factors of rehabilitation as set forth in N.J.S.A. 5:12-90h.

FACTUAL DISCUSSION AND FINDINGS

The facts are not in dispute and the respondent does not contest the Division's

statements contained in paragraph 6 of its complaint at page 2, as to her arrest in July of 1987 on charges:

> On or about July 14, 1987, Respondent, Jean Ann DeGraw, was arrested and charged with the following:
>
> | | |
> |---|---|
> | Conspiracy | N.J.S.A. 2C:5-2; |
> | Theft of Services | N.J.S.A. 2C:20-8(b) (third degree) |
> | Computer-related Theft | N.J.S.A. 2C:20-25(c) (third degree) |
>
> Ms. DeGraw denies the underlying allegations by the Division:
>
> It is alleged that beginning in May of 1983 and continuing through June of 1987, while working as a pit boss, the Respondent and another individual entered false patron names together with corresponding false player rating information into the Atlantis Casino/Hotel computer systems. Further, it is alleged that on several occasions between June of 1985 and June of 1987 the Respondent obtained complimentary goods or services valued at $807 by utilizing the false patrons information. Copies of the investigation report, written statement of the Respondent and criminal complaint are attached hereto and incorporated herein as Exhibits "A", "B" and "C", respectively.

The parties also stipulate that the charges were ultimately dismissed after being downgraded and there was no conditional discharge or pretrial intervention program required. (The DAG represents that the Atlantic City Municipal Court was unable to locate the file in this matter, but the file of Ms. DeGraw's former attorney, Steven J. Feldman, shows dismissals of those charges as of April 22, 1988).

Ms. DeGraw, who had flown in from Las Vegas, Nevada in an effort to clear up this matter, testified that she initially applied for a floor person license in May of 1979, was granted that, and later obtained a casino key license, under which she functioned as shift manager and casino manager, until her suspension in connection with these theft charges in September of 1987. Her employment history began with Caesar's Hotel and Casino, from its opening until December of 1979, and thereafter with the Brighton Casino (now the Sands Hotel and Casino), where she wrote procedures and taught training as to roulette and blackjack. In 1981, she moved on to the Playboy Hotel and Casino as a pit boss, advancing to assistant shift manager and continued there until her suspension.

She explained that her duties as pit boss, were to "run the pit" and supervise play at all tables, including blackjack and baccarat, by keeping a close eye on dealers and floor persons. The pit supervisor, who is above the pit boss, also supervises the pit clerks, who generate markers and handle the computer listings that are needed to dispense the complimentaries given to patrons based on their play in the casino. Ms. De Graw also testified that comps are sometimes given to non-players, who are accompanying players in the casino. She also stated, the Division did not dispute that the pit boss is authorized to issue comps, and that some other floor persons have that same authority, based on a player's rating. The actual rating of play is done by floor persons, based on the length of time, average bet, nature of the game being played, and other factors. As pit boss, she was authorized to write "comps" (complimentaries) for coffee shops and the bar, although casino shows and the gourmet restaurants were "comped" by the pit manager. She acknowledged that comps were "indispensible to casino operations" as a "key marketing tool." She also stated that the pit clerk and floor persons must accurately rate players to have an accurate "pay-out" of comps.

In 1983, after Playboy had become the Atlantis, the procedure for dispensing comps was based on ratings entered by the floor persons and sent to the pit clerk, who would then issue the comps to deserving players. Ms. DeGraw explained that the comps worked in a manner analogous to a savings account, with credits built up by rated play and comps issued like withdrawals from an account. She stated that one Frederick Jones worked with her 1983-84, as a pit clerk, and that she found that he was a "pretty reliable" clerk: his powers included the ability to create a patron account by entering data representative of the player's rating.

On or about June 8, 1985, Ms. DeGraw was asked by a co-worker, Andrea Ross, (a dealer), to issue a comp to Ms. Ross's parents, who were visiting the casino and wanted to get something to eat in the coffee shop. As a dealer, Ms. Ross, who occasionally dealt in Ms. DeGraw's pit, was not allowed in casino restraurants. Since there was no account for Ms. Ross's parents, Ms. DeGraw obtained coffee shop comps for these family members and concedes that in doing so, she may have used the name "Ralph Amano," which was a fictitious patron's name, but she is not sure as to this. She also states that she now is familiar with the name "Ralph Amano," but does not know if he is a real person or merely a fictitious name. Whatever the case, Ms. Ross's parents were not entitled to that comp and there is no dispute of fact on this point. . Pit Clerk Frederick J. Jones gave the following statement to DGE investigators as to inappropriate complimentaries

at the Atlantis:

> Q. Mr. Jones, would you tell me, to the best of your recolection (sic) anything that would shed some light onto the matter of complimentaries being issued at the Atlantic Casino Hotel by Pit Boss Jean DeGraw to Ralph Amano.
>
> A. When I was a pit clerk I was assigned to Jeanne DeGraw's Pit on numerous occasions. Back in May of 1983 I was working in "H" pit with Jeanne DeGraw. At that time we decided to create a fictious customer. Together we came up with the name of Ralph Amano. We though it would be interesting to put a fictious customer into the casino computer system. As a pit clerk, I was able to add new customers and their player ratings to the system. Upon adding the name Ralph Amano to the system we felt that we should also enter some player ratings for this customer. I entered player ratings into the system and then brought it up on the screen so that Jeanne could see it. After doing this, we both agreed to remain silent about this. From then on I would enter player rating from time to time. On different occasions Jeanne and I would then check Ralph Amano's computer screens to see how he was doing. As far as I was concerned, I didn't tell anyone about this and I assumed that she didn't either. But, one night I checked Ralph Amano's account and discovered that a comp had been issued in this customers name. At the earliest opportunity, I went to Jeanne and asked her about this. She told me that she had written a comp for the Garden State Cafe in the lobby for one of the dealers, and to my knowledge the comp was used by one of the dealers family members who signed Ralph Amano's name. At that time in adding these ratings to the system I simply felt that Jeanne and I were playing a game. And then when I saw the comp I felt really uncomfortable. We got into this really to alleviate the boredom in a slow pit.
>
> Q. Do you know how many comps were issued in the name of Ralph Amano between 1983 and now and by whom and for how much.
>
> A I just remember this one comp and a comp that I wrote at a later date in CRC. (P-2) (emphasis added)

Jones gave his statement on July 14, 1987, at approximately 3:30 p.m., and respondent Jean Ann De Graw also provided the following written statement, which she claims she did not personally write and signed only after having been interrogated for four hours, and threatened:

July 14, 1987
4:07 p.m.
Jean Ann DeGraw
RD#2 Box 344 E
Mays Landing, NJ 08330

I Jean Ann DeGraw work at Atlantis Casino as a pit boss.

On or about June 8, 1985 I issued a comp to Atlantis employee Andrea Ross for he parents.

This comp was for (4) people to the Garden State Restaurant.

I issued the comp to the parents of Atlantis employee Andrea Ross. I placed the comp in the name of another patron wh has player rating at Atlantis Casino.

I may have put the comp in the name of Ralph Amano, but at this time I am not sure.

I do know that this was a violation of the comp policy at Atlantis Casino. (P-1) (emphasis added)

As indicated, Ms. DeGraw denies having written the above statement and claims that she signed it under some duress. She does concede, that she may have used the name of Ralph Amano when obtaining comps for Ms. Ross's parents, but is unsure of this. She claims that Jones is lying concerning her involvement in the creation of the fictitious patron, "Ralph Amano," who was used as a cover to obtain comps for family members of dealers and other floor persons. The investigation by DGE and the state police indicated that as many as eight comps for a value of $807 were issued for Ralph Amano between 1983 and 1987. (P-3). Detective D. Willshire of the New Jersey State Police, entered in his report that Jones had stated that he had issued at least one comp using the fictitious name of Amano, and also "some of the comps were issued by DeGraw." (P-2).

Ms. DeGraw has no idea as to why Jones would accuse her of creating the fictitious patron comp scam, but she denies any involvement in doing so. She admits writing a comp for a dealer's parents and may have used the Ralph Amano name. She suspects that Fred Jones may have tried to shift blame to her and though she described him as "pretty reliable," she also characterized him as a "gossip" and "difficult person," who was regarded as a "troublemaker" and avoided by most pit bosses. She felt that Jones might have been aware of the fictitious comp, but she denies emphatically that she was engaged in any scheme to create a fictitious patron, to whom comps might be charged for dealer's families and others.

Based on the evidence submitted, I **FIND** as a matter of **FACT** that Jean Ann DeGraw did issue an unauthorized comp for the parents of a dealer on or about June 8, 1985, and also that she issued these comps in the name of "Ralph Amano," which was a fictitious name. I further **FIND** that there is insufficient evidence in the record to conclude that Ms. DeGraw created the name of the fictitious customer and then put it into the casino computer system. The only evidence that she did so is the statement by Frederick Jones, who was also a suspect in the issuance of improper complimentaries and thus, any of his statements must be viewed with his interest in shifting the blame and exonerating himself. Without the benefit of Mr. Jones' live testimony subject to cross-examination, I **FIND** that the statements by Jean Ann DeGraw are more credible and worth of belief.

Ms. DeGraw also testified that she has had 26 years in the casino business, from 1961 to 1987, and has had no other criminal charges in that period, and no other employment problems. She offers character references from co-workers, who attest to her good character, honesty and integrity, as well as other virtues as dependability, professionalism and kindness. (R-1 to R-5). Particularly, I note the character reference given by Vincent Mascio and Candice Butcher of March 20, 1990:

> It was our privilege in August of 1980 to meet one of the few people in our lives, who would have such a positive impact upon our careers as Ms. Jean DeGraw. Her professionality and leadership she displayed was a true doctrine for her commitment to excellence.
>
> In an industry at times, it can become cold and stressful, Ms. DeGraw was always calm, collected, and above all most supportive. Her unstanding and sense of fair play made working conditions much more tolerable during these moments.
>
> It is hard to put into words the effects of her courtesy and upbeat attitude on everyone she came in contact with, but there is no doubt of the mark she left upon us. She has become the perfect role model for all to follow. . . . (R-5).

As indicated, efforts to obtain the file of the criminal charges of Atlantic County Municipal Court were not successful, but a record of dismissal of the charges, following a downgrade to theft, was obtained from her former attorney (P-6.

Except as otherwise noted and found above, there is no dispute as to the above facts and I **SO FIND.**

LEGAL DISCUSSION AND CONCLUSIONS

The Division has the burden of going forward and of demonstrating by a preponderance of the believable evidence grounds for statutory disqualification under N.J.S.A. 5:12-86c(1), or proving that licensure would be inimical pursuant to N.J.S.A. 5:12-86(c)2. The licensee has the burden of establishing by clear and convincing evidence the required good character, honesty and integrity, as provided by N.J.S.A. 5:12-89b(2), 90b.

In determining whether licensure of the applicant is inimical under 86c(2) or whether the applicant has clearly and convincingly demonstrated her good character, honesty and integrity, the Commission may consider the following factors of rehabilitation:*

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

[N.J.S.A. 5:12-90h]

Although the Division argues that the factors of rehabilitation are not relevant or applicable to the issue of whether a casino key employee license holder can demonstrate good character, honesty and integrity, I **CONCLUDE** that these factors are relevant, even if not expressly made so by the statute, under the Appellate Division's reasoning in the Dunston case, and the Commission's holding in the Bershad case.

*See, Dunston v. Division of Gaming Enforcement, Superior Court of New Jersey, App. Div., dec'd April 10, 1990, A-197-89T3; Division of Gaming Enforcement v. Davis, N.J.A.R. 301, 314 (1985); Application of Edward Bershad Company, 12 N.J.A.R. 48 (1989).

In applying the factors of rehabilitation to the question of inimicality, as well as that of good character and integrity, in this case, I note that the nature and duties of the position of pit boss are highly sensitive and supervisory in nature and require the holding of a casino key license, which is of a higher caliber than casino employee licenses and casino hotel employee registrations. See, N.J.S.A. 5:12-89b(2). The Pit boss function as the eyes and ears of the casino in the midst of the action on the floor. (Factor 1; 90h) The offense of conduct of issuing improper comps under fictitious patron names is serious and defrauds both the casino, as well as patrons who have a legitimate entitlement to these comps which may be the only consolation they receive if the cards and dice are not going their way. Complimentaries are key tools to the casino industry and any conduct which defrauds casinos of "comps" is a serious offense, especially when committed by a casino key licensee, occupying a sensitive position such as that of pit boss. (Factor 2; 90h). The circumstances under which the offense occurred in June of 1985, show that the licensee was asked by a fellow employees, who was a dealer and social acquaintance, to grant some comps so her parents could eat in the casino coffee shop, and she did so, in all probability utilizing the fictitious name of "Amano." Ms. DeGraw admits to issuing these improper comps in June of 1985. She denies issuing other comps and the Division presents no proof that she did so, beyond the statement of someone who was also accused of the offense, and not produced to give testimony. In light of my above finding that the Division has only proven by a preponderance of the believable evidence that Ms. DeGraw issued comps to Ms. Ross's parents in June of 1985, I further **CONCLUDE** that her conduct was isolated and not repeated. (Factor 3, 4 and 6; 90h). I don't believe I asked Ms. DeGraw her age at the hearing, but she appeared to be in her early to mid-40's and I note that she has worked in the casino industry since the 1960's. (Factor 5; 90h). She cites no social conditions contributing to the conduct, other than the fact that this may have been a not entirely uncommon practice at the casino of comping the relatives of dealers and other employees through a generally used fictitious name. (Factor 7). As to evidence of rehabilitation, she offers the recommendations of persons who have worked with her, and also notes that the charges were ultimately dismissed without her appearance in court. She also offers her long and unblemished service in the casino industry in support of her good character, honesty and integrity.

As to an inimicality, I **CONCLUDE**, considering all of the above factors of rehabilitation, that Ms. DeGraw is not disqualified on the basis of this isolated mistake in 1985 from holding a casino key employee license. Except for the comps given to her friend's parents in June of 1985, which she admits, she never pled guilty and was not

convicted of the broader and more serious charges of conspiracy and computer related theft. Based on the evidence presented by the Division, which consists of a statement provided by the person under investigation for these crimes who was not produced at the hearing for cross-examination, I **CONCLUDE** that the respondent's conduct was limited so that isolated conduct of an improper issuance of comps in June of 1985, and I further **CONCLUDE** that that conduct alone, given her long and otherwise good service in the casino industry, is not sufficient to render her licensure inimical to the policies of the Casino Control Act or to casino operations under 86c(2). I found Ms. DeGraw's testimony to be credible and convincing and I note that she took the considerable trouble to travel all the way from Las Vegas, Nevada, to clear her name. Her manner was candid and forthright, and, based on all the mortal indicators of demeanor and bearing evident at least to me at the hearing, I believed her story that the instance of improper comps was limited to the June 1985 occasion. I also note that the Division has the burden of proof as to disqualification by an inimicality, and I **CONCLUDE** that it has failed to bear that burden. As pit boss, Ms. DeGraw was in a position to create a fictitious name and use it to issue improper comps, but this is also true (if not more so) of the pit clerk, Frederick Jones, who had more frequent responsibility in the area of comps.

Ms. DeGraw has the burden of showing, by clear and convincing evidence, her good character, honesty and integrity, and I **CONCLUDE** that, again considering the above factors of rehabilitation as applied to this casino key employee licensee, she has made this showing, despite her lapse of judgment in 1985. She has submitted a number of character references attesting to her good character, honesty and integrity, and her record in the casino industry, beyond this one regrettable incident, was a long and good one. There was also no evidence that she issued comps to benefit herself or in any other way to profit, but merely unwisely agreed to issue comps for a dealer's parents, which may well have been a widespread practice at the casino during that time, as the total of $807 in comps issued to "Ralph Amano" would seem to suggest. Ms. DeGraw struck me as a dedicated casino career professional whose one proven and admitted mistake in 1985 does not, in my opinion, tip the scales against her under N.J.S.A. 5:12-89b(2) and 90h. I realize that she was functioning as a pit boss and not as a cleaning person as was the case in the Dunston matter, but she is no less entitled to benefit of the factors of rehabilitation, and I **CONCLUDE** that she has show good character, honesty and integrity, notwithstanding her exercise of bad judgment in June of 1985.

DISPOSITION

It is **ORDERED** that the Division's complaint seeking revocation of the casino key employee license of Jean Ann DeGraw is hereby **DISMISSED** for the reasons discussed above.

This recommended decision may be adopted, 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 11, 1990
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

7-12-90
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 16 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

slf

WITNESSES

Jean Ann DeGraw

EXHIBITS

For the Petitioner:

P-1 Statement by Ms. DeGraw

P-2 Statement by Mr. Jones

P-3 Investigation Report

P-4 Criminal Complaint

For the Respondent:

R-1 Letter by Dennis Leong

R-2 Letter by Jerry Hunt

R-3 Letter by Michael Mavromatis

R-4 Letter by Vincent Mascio and Candice Butcher

R-5 Letter by Susanna Marren

R-6 Paper trail

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-114
LICENSE NO. 045497-21
REGISTRATION NO. 047968-40
OAL DOCKET NO. CCC 08611-89
ORDER NO. 90-44-7

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

Complainant,

v.

MARTA DIAZ, a/k/a LARES

Respondent.

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 meetings of October 31 and November 7, 1990,

IT IS on this 6th day of December 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that Marta R. Diaz's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Marta R. Diaz 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.

NEW JERSEY CASINO CONTROL COMMISSION

(RSM)

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC-08611-89
AGENCY DKT. NO. 90-114

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

Petitioner,

vs.

MARTA R. DIAZ a/k/a LARES,

Respondent.

NORMA L. STANCIL, Deputy Attorney General for petitioner
(Robert J. DelTufo, Attorney General of New Jersey, attorney)

MARTA R. DIAZ, respondent, pro se

Record Closed: AUGUST 28, 1990 Decided: SEPTEMBER 12, 1990

BEFORE: **JOSEPH E. KANE, ALJ:**

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) requesting the revocation of the casino employee license #45497-21 and casino hotel employee registration #47968-40 issued to respondent. The Division alleges that respondent committed acts which are inimical to the interests of the Casino Control Act and the gaming industry of the State of New Jersey and respondent lacks the requisite good character, honesty and integrity required for licensure.

PROCEDURAL HISTORY

The Division filed its complaint with the Commission on October 18, 1989. Respondent requested a hearing on October 27, 1989 and on November 3, 1989 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A 52:14F-1 et seq. A prehearing conference was conducted on February 20, 1990 by Lillard E. Law, ALJ followed by a hearing which was held on August 14, 1990. The record was closed on August 28, 1990.

ISSUES

A. Whether respondent's continued licensure and registration is inimical to the policy of the Casino

Control Act pursuant to N.J.S.A. 5:12-86c because she is alleged to have committed a violation of N.J.S.A. 2C:20-3 (theft), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon testimony and documents proferred at the hearing held on August 14, 1990, the below represents **FINDINGS OF FACT AND CONCLUSIONS OF LAW** in this matter.

Respondent is 42 years old and resides in Atlantic City where she supports herself and her three children ages 19, 12 and 11. Respondent is the holder of both a hotel registration and casino employee license. She has worked at several casinos where her positions have included housekeeping at Trump Plaza, Slot Booth Attendant at Bally's and Slot Booth Attendant at Showboat, which is the site of her current employment. She has enjoyed a good working relationship with all of her casino employers and has never been fired with the exception of her dismissal from Bally's which is the subject of the within litigation.

The Division alleges that on July 18, 1989 respondent engaged in an act of theft by removing $40.00 from her cash drawer. Respondent had been a slot booth attendant for five years. Respondent testified that with the exception of two write-ups for overage and shortage in her cash drawer she

generally had a good record with Bally's. The Division submitted evidence which shows that respondent had ten write-ups for overage and shortage in her cash drawer.

Christopher Hartny, a surveillence officer for seven years with Bally's, had noticed respondent several months prior to the July 18, 1989 incident. His attention had been drawn to the respondent because of numerous procedural violations committed by her. Most notably, respondent was continuously "counting down the bank" during the course of her shift. According to Madeline C. Edelmann, Slot Cage Supervisor, it is a violation of procedure to completely count all the money in a slot booth attendant's cash drawer. This is known as "counting down the bank". This accounting procedure should only occur at the beginning and conclusion of a shift, although it is common according to Ms. Edelmann, for slot attendant's to count money in order to determine whether they have 25 of one particular denomination in order that the money can be "clipped". Clipping the money is a way of organizig the cash drawer which in turn enables an easy countdown at the conclusion of a shift. In his experience, Mr. Hartny found that excessive "counting of the bank" is an indicator that a slot booth attendant may be short changing patrons and thus trying to determine how much money can be skimmed off the top at the conclusion of the shift. In the event the employee feels there is a shortage or an overage during the course of the shift, Bally's requires that the countdown procedure be performed in front of a supervisor.

The Division presented as Exhibit P-5 a VHF tape which was

recorded by Christopher Hartny. At approximately 18:29 the tape shows respondent counting down the bank. There are no patrons being serviced, nor are there any in the vicinity. At approximately 18:42 on the tape respondent wraps several bills, denominations unknown, around the finger of her left hand and then puts her left hand into her left apron pocket. Her hand then comes out of the pocket without the bills. Note, Mr. Hartny testified that it is proper for slot booth attendants to wrap bills around their fingers in order to better secure the money while servicing patrons. At approximately 18:46 on the tape respondent reaches in her left pocket and removes coins. She is next observed removing bills, denominations unknown, from the apron pocket and placing them in her left pants pocket underneath the apron. She then goes about her normal duties in providing change to patrons. However, she is observed counting down the bank eight times over the next 20 minutes.

Noting that respondent had placed bills in her pocket, Christopher Hartny contacted the Division of Gaming Enforcement who together with respondent's supervisor, Ms. Edelmann, approached her at approximately 19:13. At this point, Ms. Edelmann requested that respondent close down and count the bank. The tape shows respondent reaching into her left pants pocket, removing the bills and co-mingling them with other money in her right hand at which time she places all of the money on the counter. Detective Martin Higgins of the Division of Gaming Enforcement testified that from his vantage point on the runway, he was unable to view respondent reaching into her left pocket

since in his opinion, she intentionally turned away from him in order to avoid him viewing the transaction. Detective Higgins recovered two 20 dollar bills that appeared like they had been folded eight times.

Respondent claims that the two folded 20 dollar bills where her property. She had intended during her lunch break to leave Bally's and purchase shoes at the Ocean One Mall. She claimed that she became distracted when playing a free pac man machine and returned to her shift with the money still in her left pocket. She was aware that it was a violation of Bally's rules to have money on her person while on duty, however, she did not follow Bally's procedure to notify her supervisor, because she was afraid she would be disciplined. The tape shows respondent as being very nervous when approached by her supervisor and the DGE agents. She explained that she removed the money from her pants and placed it on the counter with the other cash because she knew she was violating Bally's procedure. Respondent's proferred explanation as to why she had the $40.00 on her person is inconsistent with her subsequent testimony that she also knew that it was a violation of Bally's rules to leave the work premises while on duty. When her cash drawer was counted down at the request of her supervisor, there was found to be a $40.00 overage.

The two issues presented herein are whether continuing licensure of the respondent would be inimical to the policies of the Casino Control Act and the gaming industry in general pursuant to N.J.S.A. 5:12-86c(2) and whether the respondent

possesses the requisite good character, honesty and integrity required of a license holder under N.J.S.A. 5:12-89b(2). It is unnecessary to reach the second issue of the respondent's good character, honesty and integrity if it is first determined that respondent's continuing licensure would be inimical to the Casino Control Act and the gaming industry. Thus, the inimical analysis must be considered first.

N.J.S.A. 5:12-86c(2) states:

> "Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of the act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10 year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing."

Whether an individual's conduct rises to the level of inimicality to the Act and legalized gaming depends upon the circumstances of each case. The factors to be weighed and considered are the nature of the offense, the circumstances surrounding the offense including mitigating and aggravating factors, the amount of time that has passed from the offense to the date of the hearing. 8 N.J.A.R. 301 at 313. Included in this analysis are the eight factors set forth in Section 90(h) and 91(d) of the Act. It must

be emphasized that an individual cannot affirmatively demonstrate rehabilitation pursuant to 90(h) and 91(d) of the Act in order to overcome the disqualifying offense of inimicality set forth in Section 86c(2). Nevertheless, the enumerated rehabilitation factors set forth in Sections 90(h) and 91(d) of the Act can be utilized in the inimical analysis in order to determine whether the individual must be disqualified from participation in the gaming industry. Applying these factors to the facts of the instant matter I **FIND** as follows:

A. HAS AN OFFENSE OCCURRED WHICH IS INIMICAL TO THE INTEREST OF THE CASINO CONTROL ACT.

It was said by the ancient Chinese philosopher, Confucius "a picture is worth a thousand words". The tape in the instant matter supports that ancient proverb since it was the tape, and not Detective Higgins, that showed respondent removing the money from the cash drawer and then replacing the money when confronted by the DGE agents. Respondent claims that the money in her left pants pocket was hers and was to be utilized to purchase shoes during her lunch break. At this point, her credibility must be questioned since she also testified that she knew that she was not permitted to leave the premises and yet had intended to do so in violation of Bally's policy. Respondent also admitted that she normally never spent $40.00 on the purchase of shoes. Where the standard is reasonable probability, (preponderance of the evidence), the evidence must be such as to "generate (the) belief that the tendered hypothesis is in all human likelihood the

fact". Loew vs. Union Beach, 56 N.J. SUPER. 93, 104 (App. Div. 1959), certif. den. 31 N.J. 75 (1959), overruled on other grounds, 36 N.J. 487 (1962). Respondent's own testimony is inconsistent with her motives, thus drawing into question her veracity concerning the incident. This inconsistency coupled with the taped observation of respondent removing and then replacing currency leads to the conclusion that respondent committed an act of theft equivalent to N.J.S.A. 2C:20-3. The Division has met its burden of demonstrating by a preponderance of the credible evidence that respondent did engage in an act of theft on July 18, 1989 while employed as a slot booth attendant at Bally's Park Place Hotel Casino.

An act of theft on the floor of a casino, regardless of the amount, must in and of itself be considered to be of a serious nature and thus inimical to the interests of the Casino Control Act and the gaming industry of the State of New Jersey. There are many factors which entice patrons to gamble in casinos in Atlantic City. Many of these enticements are the direct results of clever and innovative marketing promotions developed by each casino. In addition to these factors, and perhaps most importantly, patrons must feel secure that while they are customers of a casino, they will not be short changed or cheated in any way. Whether respondent obtained the $40.00 by intentionally cheating a patron or whether the overage occurred through inadvertance was not proven by the Division. The Division did demonstrate, however, that respondent did intend to

retain monies which was the property of her employer, Bally's Park Place Hotel Casino. Such actions are patently unacceptable if confidence in the gaming industry is to continue and accordingly, I **FIND** that the Division has met its burden to prove by a preponderance of the credible evidence that respondent committed an act deemed inimical pursuant to Section 86c(2) of the Act.

B. DOES THE RESPONDENT POSSESS THE REQUISITE GOOD CHARACTER, HONESTY AND INTEGRITY REQUIRED OF A LICENSE HOLDER PURSUANT TO SECTION 89b(2) OF THE ACT.

In support of her good character, honesty and integrity, respondent submitted three letters (Exhibits R-1, 2 and 3). In sum, this evidence shows that respondent is a hardworking, caring and supportive parent who is a regular attendant at church and supportive of her parrish and parrish activities. She also indicated that every Tuesday since her husband died, approximately three years ago, she has been participating in a parrish program wherein she visits the sick and elderly.

Unfortunately for respondent, whenever a determination of inimicality occurs, it is unnecessary to reach the issue of good character, honesty and integrity. Accordingly, considering the discussions set forth above, this issue will not be addressed.

SUMMARY

For the reasons set forth above, I **FIND** that respondent,

Marta R. Diaz a/k/a Lapres committed an act of theft within the meaning of N.J.S.A. 2C:20-3 on July 18, 1989 and as such, has violated Section 86c(2) of the Act. Based on this determination I hereby **REVOKE** respondent, Marta R. Diaz a/k/a Lapres', casino employee license #45497-21 and casino hotel employee registration #47968-40.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Sept. 13, 1990
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

9/14/90
DATE

CASINO CONTROL COMMISSION

OAL DKT. NO. CCC-08611-89

Mailed to Parties:

SEP 2 1 1990

DATE

Jayne LaVecchia

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

FOR PETITIONER:

P-1 New Jersey State Police Investigation Report dated July 18, 1989;

P-2 New Jersey State Police Arrest Report dated July 18, 1989;

P-3 Atlanitc City Municipal Court Complaint & Summons dated July 18, 1989;

P-4 Bally's Park Place Surveillance Incident Report dated July 18, 1989;

P-5 Video Tape of incident of July 18, 1989;

P-6 Affidavit of Brian Donahue dasted August 22, 1990;

P-7 Employee Performance Record;

FOR RESPONDENT:

R-1 Letter from Sylvia Williams, undated;

R-2 Letter from Fr. Jeff Burton dated August 8, 1990;

R-3 Letter from Raymond Graczyk dated August 10, 1990;

R-4 Letter from Bank One, undated;

R-5 Showboat Hotel Casino & Bowling Center Cashier Variation receipt dated August 10, 1990;

OAL DKT. NO. CCC-08611-89

WITNESSES

FOR PETITIONER:

Christopher Hartny
Detective Martin Higgins
Madeline C. Edelmann

FOR RESPONDENT:

Marta R. Diaz a/k/a Lapres

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO: 90-EA-44
APPLICATION NO. 049454-21
OAL DOCKET NO. CCC 6320-89
ORDER NO. 90-29-4

APPLICATION OF EMILIO DOLPIES
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 July 18, 1990,

IT IS on this 27th day of July 1990, ORDERED that the initial decision is modified as follows:

The statutory basis for disqualification is N.J.S.A. 5:12-86(g) as well as (c)(1).

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6320-89
AGENCY DKT. NO. 90-EA-44

EMILIO P. DOLPIES,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Emilio P. Dolpies, pro se

Charles F. Kimmel, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: April 3, 1990 Decided: May 18, 1990

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

This matter comes before the Office of Administrative Law following transmittal as a contested case from the Casino Control Commission, N.J.S.A. 52:14F-1 et seq. Mr. Dolpies had applied to the Commission for renewal of his casino employee license. The Division of Gaming Enforcement ("Division") filed a letter on May 18, 1989, in which it requested the Casino Control Commission to deny renewal. Mr. Dolpies requested a hearing on the proposed rejection of his renewal application and this resulted in the transmittal of the case to the OAL.

A prehearing conference was held before Administrative Law Judge Edgar R. Holmes on December 11, 1989. A prehearing order was issued on December 14, 1989. The hearing was held before Administrative Law Judge Jeff S. Masin on April

3, 1990, at the Pleasantville Municipal Court. The record closed following completion of the hearing.

EVIDENCE

Mr. Dolpies was called as a witness on behalf of the Division. After testifying that he was born in May of 1964, Dolpies spoke concerning his arrest on September 9, 1988 for an incident which he claimed occurred January 22, 1988, in which he acknowledges that he sold marijuana to a police informant. According to Dolpies, he had received a few phone calls from a friend of his asking him for marijuana and after a while he agreed to provide it. He was asked for about one ounce and he provided approximately that amount.

Mr. Dolpies pled guilty to an accusation, No. 88-12-3044E, filed in the Superior Court of New Jersey, Law Division, Atlantic County on December 15, 1988. The charge was distribution of a controlled dangerous substance in the fourth degree for having distributed marijuana under one ounce, in violation of N.J.S.A. 2C:35-5a(1) and 2C:35-5b(12). Based upon his plea of guilty he was sentenced by Honorable Steven C. Perskie, then Judge of the Superior Court, to 30 days in the Atlantic County Jail, of which he served 24, 2 years probation, a $500 fine, a 6-month suspension of his driver's license, a $30 fee to the Violent Crimes Compensation Board, $750 to the DEDR, and a lab fee of $50. At the time of the hearing Dolpies was still on probation, but according to him a recommendation has been made for early termination. A letter of March 29, 1990 from Robert William Johnson, a parole agent for the Board of Probation and Parole of the Commonwealth of Pennsylvania, who supervises Dolpies pursuant to his New Jersey conviction, indicates Johnson is "recommending that his probation be terminated."

Additional evidence presented by the Division included police reports which indicated that Dolpies had in fact made the sale to the informant in the presence of the state police detective who was working undercover. A laboratory test performed by the New Jersey State Police Laboratory indicated that the actual amount of the sale was 34.37 grams gross weight, somewhat in excess of 1 ounce.

Mr. Dolpies testified in his own behalf and acknowledged that he had committed a "grevious offense," that he had made a "mistake," but that he had been in no further trouble and not involved with drugs in any way. He described himself as "young, stupid" and also said that he was "sort of coerced." He has since

undergone random drug testing, all of which tests have been negative and has successfully performed his probationary obligations. He has paid his fines and of course been in jail. Since the incident, he has married and is now the father of a one-year child. He described himself as a "dedicated family man."

Dolpies is presently a realtor associate with I.W. Levin and Company, Inc. of Philadelphia, working on a commission basis since August 1989. He has also previously worked at the Trump Castle, having been terminated from that employment at the time of his sentencing. He described himself as having an excellent employment record and thinks that he was a model employee while working as a boxperson at the casino. He also worked at the Tropicana in 1984, for about two months, but was terminated for a no call/no show, which he claimed resulted from a mixup in his schedule. He was then rehired by the Tropicana and stayed for two years before leaving to go to work at Trump Castle.

Mr. Dolpies presented character references from several individuals, including Lee Cohen, a broker at I.W. Levin and Co., Inc., who indicated that he found Dolpies to be "hard-working, dependable, honest, trustworthy, loyal, and an excellent addition to our staff and industry." Cohen does not indicate whether he is aware of Dolpies' conviction. However, he does state that he has known him for "sometime."

Parole Agent Johnson, in his letter of March 29, 1990 referred to above, indicates that since his conviction Dolpies has not been involved in any further criminal activities and has been "very responsible, attentive and fully cooperative" while under his supervision.

> Mr. Dolpies has impressed me as being a dedicated family man and has worked relentlessly to redeem himself and fulfill his financial obligation to the Atlantic County Probation Department.

He further describes him as "sincere" and believes that if given a second chance "he would make the best of it."

Stewart A. Greenberg, Supervisor I for the Pennsylvania Board of Probation and Parole, writes in a letter of November 27, 1989 to Lee Cohen at Levine and Company indicating that despite Dolpies' previous criminal episode he has been "responsive to our supervision and has always presented himself when requested." He further indicates that he has followed probation and parole rules "with great diligence" and that in connection with questions raised concerning whether or not

Dolpies could obtain a real estate license that "I think that would be a travesty" if he were not permitted to have the license.

By letter of December 6, 1989, Pierce L. Clouser, Jr., Administrative Officer for the Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, Real Estate and Vehicle Division, advised Dolpies that the Real Estate Commission had considered his application for a salesperson initial license and had determined that his prior criminal record "will not serve as a barrier against Pennsylvania real estate licensure." Dolpies has since received a license, issued March 1, 1990.

Additional character references were received from Anthony J. Screnci, Susan Mignucci and Gar Bezotsky, who indicate knowledge of Dolpies as a "kind and considerate person," a "dependable and reliable person," one who is "very honest and hard-working." There is no indication where either Screnci or Mignucci, who have known him for two or three years, are aware of his criminal involvement. Mr. Bozotsky, writing to the Pennsylvania State Real Estate Commission, indicates a 15 year close friendship and finds that Dolpies has "always conducted himself at the highest standard of character and integrity." He adds

> he has always been dependable, and conscientious. I feel, although he may have made a stupid mistake two years ago, that he deserves to be given a chance to prove to the world that he is the person of character and integrity that I have known for so many years.

DISCUSSION

Mr. Dolpies was involved in the sale of a controlled dangerous substance, marijuana. There is no indication that he was engaging in this practice in an ongoing business-type capacity. It appears that he did a "favor" for a "friend," although he was paid. Despite this, his conduct was clearly illegal and reprehensible. In addition, since this incident occurred in 1988, at the time he was a licensed casino employee. Given the standards imposed upon such licensees, the incident becomes even more serious, since Dolpies carried upon him at the time the imprimateur of state approval of his character and conduct.

In a circumstance such as this, one must be leery of permitting an individual who has violated a drug law from continuing to be licensed. This is especially so where the violation involved distribution. However, in this situation one must

recognize that the drug involved was marijuana, which while certainly of a serious nature, is not in the same class as a substantial threat as some of the hard drugs. In addition, Dolpies appears to have engaged in a very limited criminal activity. There is no indication from the evidence that he was involved in a distribution enterprise of any sort.

Mr. Dolpies presented himself as a very sincere, well-spoken individual. The character references from his friends and acquaintances are strong and more significantly, the remarks of the Pennsylvania parole officers who have supervised him are extremely positive.

Given the above, it is necessary to consider whether, despite the commission of conduct which requires automatic disqualification from licensure pursuant to N.J.S.A. 5:12-86c(1), whether Mr. Dolpies has established by clear and convincing evidence that he has rehabilitated himself from the disqualification, as permitted by N.J.S.A. 5:12-90h. As noted, the offense which he committed was serious in nature, but limited in scope, frequency and, in the spectrum of illegal drug distribution, in type. The circumstances indicate that this was probably "friendly" distribution, rather than part and parcel of a scheme or business of drug distribution. At the time that he committed the offense, Dolpies was approximately 24 years old. The incident itself occurred somewhat over two years prior to the hearing and the conviction and sentencing approximately a year and a quarter before the hearing. The conduct clearly seems to have been isolated. Other than his youth and general circumstances of present social conditions involving the widespread use of drugs, there are apparently no other social conditions which contributed to the offense. Finally, with respect to evidence of rehabilitation, I **CONCLUDE** that Mr. Dolpies has established that he has successfully handled his parole status, that he has become employed, married, and a father, that he is living and conducting himself in accordance with the law and that he has strong recommendations from both his friends, employer and most importantly from his parole supervisors.

Based upon the evidence presented before me, and in light of the limited nature of the offense involved, I am convinced that Mr. Dolpies has in fact rehabilitated himself.

Based upon the above, I **CONCLUDE** that Mr. Dolpies did commit a disqualifying act, but that he has established rehabilitation by clear and convincing evidence and that he now possesses the requisite good character, honesty, and

integrity. Under these circumstances, I **CONCLUDE** that the his license should be renewed. It is so **ORDERED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 18, 1990
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

5/18/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

5/22/90
DATE

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Letter of March 29, 1990 from Parole Agent Robert William Johnson

P-2 Letter of November 27, 1989 from Stewart A. Greenberg, Supervisor I

P-3 Letter of March 26, 1990 from Lee Cohen

P-4 Letter of December 6, 1989 from Pierce L. Clouser, Jr., Administrative Officer, Bureau of Professional and Occupational Affairs, Real Estate and Vehicle Division, Commonwealth of Pennsylvania

P-5 Commonwealth of Pennsylvania real estate sales person license certificate no. RS-182793-L

P-6 Letter from Anthony J. Screnci

P-7 Letter from Susan Mignucci

P-8 Letter from Gar Bezotsky

On behalf of respondent:

R-1 New Jersey State Police Investigation Report of Detective W.C. Ames, dated January 22, 1988, 2 pages

R-2 New Jersey State Police Supplementary Investigation Report of Detective W.C. Ames, dated February 9, 1988

R-3 New Jersey State Police Forensic Science Bureau Laboratory Report, Re: Laboratory No. 83980H

Re-4 Accusation 88-12-3044E, with attached Waiver of Indictment, Order for Commitment

R-5 Employee License Renewal Application, License No. 49454-21

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-339; 89-EA-386
APPLICATION NO. 074931-22
REGISTRATION NO. 080048-40
OAL DOCKET NO. CCC 03389-89
ORDER NO. 90-25-3

APPLICATION OF CHARLDON D. EDWARDS
FOR A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

v.

CHARLDON D. EDWARDS,

Respondent.

ORDER

A hearing 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 20, 1990,

IT IS on this 13th day of July 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is denied and the registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Charldon D. Edwards is prohibited from reapplying for or obtaining 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3389-89
AGENCY DKT. NOS. 89-339
AND 89-EA-386

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
CHARLDON D. EDWARDS,
Respondent.

James J. Armstrong, Deputy Attorney General, petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Charldon D. Edwards, respondent, pro se

Record Closed: April 17, 1990 Decided: May 16, 1990

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 registration and with an application by respondent for a casino employee license. 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 hearing was conducted on April 17, 1990, after which the record closed.

The questions presented are whether respondent was found guilty of attempted armed robbery in the State of New York, a disqualifying offense pursuant

to N.J.S.A. 5:12-86c; whether respondent's licensure or continued registration is inimical to the policies of the Casino Control Act because of an unprosecuted crime committed within the casinos, N.J.S.A. 5:12-86c; whether respondent failed to reveal material facts when he filed his Personal History Disclosure Forms (PHDF) in violation of N.J.S.A. 5:12-86b; whether respondent can establish his good character pursuant to N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b, and finally whether respondent can demonstrate rehabilitation. N.J.S.A. 5:12-90h and/or 5:12-91d.

The facts are essentially undisputed. On September 21, 1978, respondent was arrested by the New York City police and charged with theft of services, comparable to N.J.S.A. 2C:20-8 and resisting arrest, comparable to N.J.S.A. 2C:29-2. Respondent was found guilty and fined.

On January 25, 1979, respondent was arrested by the New York City police and charged with robbery comparable to N.J.S.A. 2C:15-1 and criminal possession of a weapon comparable to N.J.S.A. 2C:39-5. Respondent was found guilty and sentenced to one to three years in prison. Respondent disclosed this arrest on his PHDF.

On March 6, 1981, respondent was arrested by the Irvington police and charged with two counts of robbery, contrary to N.J.S.A. 2C:15-1 and simple assault, contrary to N.J.S.A. 2C:12-1(a). On May 21, 1981, the charges were dismissed by an Essex County Grand Jury.

On July 27, 1984, respondent was arrested by the Newark police and charged with prostitution, contrary to N.J.S.A. 2C:34-1(a). Respondent clarified this at the hearing and stated that he was actually charged with solicitation.

On January 27, 1985, respondent was arrested by Newark police and charged with aggravated assault, contrary to N.J.S.A. 2C:12-1(b); respondent pled guilty to the downgraded offense of simple assault, contrary to N.J.S.A. 2C:12-1(a). Respondent was given a 30-day suspended sentence, one year probation and a fine. Respondent disclosed this arrest on his PHDF.

On December 27, 1987, respondent was arrested by New Jersey State Police and was charged with theft by unlawful taking, contrary to N.J.S.A. 2C:20-3. This offense occurred while he was employed as a housekeeper at the Showboat Hotel and Casino and respondent was terminated from employment as a result of this incident.

The charge was eventually dismissed in Atlantic City Municipal Court for lack of prosecution.

On December 28, 1987, respondent was arrested by Atlantic City police and charged with the possession of cocaine, contrary to N.J.S.A. 2C:35-10(a)(1) and possession of a hypodermic needle, contrary to N.J.S.A. 2C:36-6. Respondent was found guilty of these offenses and was placed on 18 months probation and fined. This arrest occurred after respondent filed his Personal History Disclosure Forms in November 1987.

Trooper Brian Brady of the New Jersey State Police testified on petitioner's behalf. He investigated the incident of December 27, 1987 at the Showboat. Trooper Brady testified that respondent admitted sweeping up a patron's watch in the slot machine area and then giving it to a co-employee because he was aware that security was looking for it.

Respondent testified in his own behalf. He acknowledged his intention to take the watch but stated that he "was high at the time." He has attempted to kick his drug habit many times, and is still trying. Respondent testified that he had forgotten the details of the three prior arrests and/or convictions which he failed to disclose, and thought that listing two would be enough.

Respondent is 30 years old. He testified that he has paid for his crimes, and is attempting to straighten out his life; continued employment in the casinos is important to him. From March 26, 1988 to the present, respondent has been employed by Caesars Boardwalk Regency Hotel and Casino without incident as a kitchen porter. This is the substance of the record.

Respondent failed to disclose material information on his PHDF and this is a near absolute bar to his licensure or continued registration. Additionally, he was convicted of possession of cocaine two years ago and admitted committing an offense on the casino floor while under the influence of drugs. He does not contest his conviction for attempted armed robbery in New York, a disqualifying offense. These facts taken together with his other offenses make his burdens with respect to good character, and rehabilitation insurmountable.

Based on the foregoing, it is my conclusion that respondent committed a disqualifying offense, and that his licensure and/or continued registration would be

inimical to the policies of the Act. He has not carried his affirmative burdens. It is **ORDERED** that his license application be denied and that his registration be revoked.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

5/16/90
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

5/17/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

May 21, 1990
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

jz

EXHIBITS

For the petitioner:

P-1 Investigation Report

P-2 Computer printout

P-3 Request for Criminal History Record Information

P-4 Major Incident Report, Police Department, Irvington, New Jersey

P-5 Incident Report, dated January 28, 1985

P-6 Investigation Report, dated December 27, 1987

P-7 Indictment No. 88-01-0085 A

P-8 Personal History Disclosure Form -- 2A, dated November 16, 1987

P-9 Personal History Disclosure Form -- 2A, dated November 16, 1987

P-10 Investigation Report, dated November 14, 1989

P-11 Investigation Report, dated January 11, 1990

P-12 Complaint, No. S512806

WITNESSES

Trooper Brian Brady
Charldon D. Edwards, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-53
REGISTRATION NO. 069628-40
OAL DOCKET NO. CCC 09091-89
ORDER NO. 90-41-2

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

Complainant,

v.

CHRISTOPHER E. ESTRADA,

Respondent.

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; and the Commission having considered the entire record of these proceedings at its public meeting of October 17, 1990,

IT IS on this 27th day of November 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the respondent is allowed to retain his registration substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9091-89
AGENCY DKT. NO. 90-53

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
CHRISTOPHER E. ESTRADA,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for the petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Charles T. Eckel, Esq., for the respondent

Record Closed: July 10, 1990 **Decided:** August 22, 1990

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

This matter concerns the complaint filed with the Casino Control Commission (Commission) on August 16, 1989, seeking revocation of the casino hotel employee registration of the respondent, Christopher E. Estrada. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on November 28, 1989, 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 23, 1990, and at that time the parties agreed that the issue in this matter is:

> Whether respondent's continued registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c, because he is alleged to have committed violations of N.J.S.A. 2C:5-2 and 2C:34-1b(5), despite the fact that such actions were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

The hearing took place on July 10, 1990, at the Pleasantville City Hall, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** that the following facts are not in dispute.

As of December 17, 1988, Mr. Estrada was employed by the Showboat Hotel and Casino (Showboat) as a doorperson. Mr. Estrada stated that while he was working in this position, part of his job was to greet casino guests and to answer any questions they might have. In order to help these guests, the respondent accumulated a number of business cards. Mr. Estrada had business cards for limousine services, automobile garages, stores, etc., including a number of Lotus Oriental Massage (LOM) in Ventnor, New Jersey business cards (R-5). According to Mr. Estrada, he got the LOM business cards from a taxi driver and never asked or checked to find out what services were offered by LOM. Mr. Estrada is aware that some massage parlors are houses of prostitution.

Mr. Estrada was aware that there were prostitutes coming in and going from the Showboat and recognized that certain women were prostitutes since he saw them often with different male companions. In addition to his conversation with Mr. Graves, the respondent has had conversations with other guests about prostitutes, although the word "prostitutes" was never used in the conversation. Mr. Estrada knew that prostitution was illegal; however, he was aware that his supervisors knew that prostitutes were coming and going into the Showboat and that nothing was done to stop the prostitution.

While the respondent was working on December 17, 1988, John Graves Jr., the mayor of a small town in Arkansas and a male companion, arrived at the Showboat. Mr. Graves asked the respondent a number of questions as to "where the action

was" and "where he could find some girls." Although he did not use the word "prostitute," Mr. Estrada assumed Mr. Graves was asking about prostitutes. Mr. Graves persisted in his questioning of Mr. Estrada and Mr. Estrada gave him the LOM business card. Mr. Estrada stated that this was the only LOM business card he gave out to a guest.

Unbeknown to Mr. Estrada or Mr. Graves, the State Police had been conducting an investigation of LOM and another facility in Atlantic City. The State Police believed that both of these facilities were houses of prostitution, operated by Orientals and had primarily Oriental prostitutes and patrons. The State Police determined that the operator of LOM had recruited at least one cab driver and was willing to give $5.00 for every customer brought to LOM. During its surveillance, the State Police saw Oriental males going into LOM and on October 31, 1988, Lieutenant Keith J. Halton called the LOM and was told that the facility catered only to Orientals. Later, Lieutenant Halton was told that LOM would accept non-orientals because of a lack of business.

The State Police raided LOM on December 17, 1988. While the state police officers were at the facility, there was a telephone call, and Lieutenant John Medolla answered and represented himself as a employee of LOM. The call was from a male with a southern accent who wanted two young girls to go to his room, number 913, at the Showboat. Lieutenant Medolla agreed, and several state police officers went to room 913 at the Showboat. While the other state police officers were out of sight, a female state police officer knocked on the door and asked whether the person wanted two girls from the LOM. Upon receiving an affirmative response, the state police officers entered the room and determined that Mr. Graves had made the telephone call to LOM. Mr. Graves agreed to cooperate and agreed to identify the person who had given him the LOM business card.

Several state police officers and Mr. Graves went to the hotel lobby to look for Mr. Estrada. When they arrived in the lobby, Mr. Estrada was on a break and taking a nap . A coworker went into the employee lounge, woke up the respondent and told him that somebody was looking for him. When the respondent went into the hotel lobby, Mr. Graves identified him and the state police officers started to question him about giving out business cards. According to Mr. Estrada, he was half-asleep and confused, and he was also afraid, since he sensed that there was something wrong. Mr. Estrada initially denied that he given out any business cards. Later, he was searched and the state police officers found a number of business cards

in his possession, including several LOM business cards. Mr. Estrada admitted that he gave the LOM business card to Mr. Graves but insisted that he did not know that the card was for anything but a massage parlor. The respondent felt he had done nothing wrong. According to Mr. Estrada, when the state police officers asked to look at his possessions, he refused since he felt this was an invasion of his privacy. Also, Mr. Estrada felt that the State Police had improperly questioned and searched him without first reading him his rights.

Mr. Estrada was arrested, and he was indicted for the promotion of prostitution (fourth degree offense) in violation of N.J.S.A. 2C:34-1b(5), and for conspiracy (third degree offense) in violation of N.J.S.A. 2C:5-2. According to Mr. Estrada, he was offered the opportunity to participate in the Pretrial Intervention Program; however, he refused since he felt he was not guilty of any criminal offenses. Prior to the date of his trial, the charges against Mr. Estrada were dismissed.

At the hearing, Detective Halton stated that he had been informed that one of the police officers involved in the investigation had spoken to a prostitute at the Showboat. This prostitute was not associated with the LOM; however, she stated that she was working with a doorperson named Chris. This information is not contained in any of the state police reports since the officers were trying to get this prostitute to become an informant. Charles T. Eckel, Esq., on behalf of the respondent, objected to the admission of the hearsay testimony relating to this prostitute. I allowed the testimony to go into the record, and reserved decision as to what weight, if any, to give to the testimony. Since there was no other evidence presented during the hearing as to Mr. Estrada's alleged connection with this prostitute and no evidence that this prostitute ever positively identified the respondent as the doorperson she worked with, I do not consider this testimony to be reliable and I will not consider this testimony in reaching my decision in this matter.

Sonja Estrada, the respondent's mother testified that he has lived with her almost his entire life and that she believes him when he says that he did not know that the LOM had prostitutes.

Mrs. Estrada stated that in 1985 the respondent had joined the navy and was involved in a bad motor vehicle accident while he was being conveyed to the naval base. Mr. Estrada was badly injured and was in the hospital for approximately four

months. Initially, Mr. Estrada was unable to walk and it took him a long time at home to recover. Because of his injuries, he could not stay in the navy. Mr. Estrada became emotionally withdrawn because of the seriousness of his injuries and the fact that he could not fulfill his long-term goal of a navy career (R-2, R-3, R-4). Mrs. Estrada stated that eventually her son recovered and that he was very happy with the doorperson position at the Showboat. After he lost this job, Mrs. Estrada stated that her son again became depressed and he again had to put his life together. Mrs. Estrada said that her son has done this and he now operates his own construction company. Prior to the Showboat incident, Mrs. Estrada stated that her son was very easy going, ready to do anything and could be easily lead by others. Mrs. Estrada feels that her son has learned from the Showboat incident and that he is now a more responsible person, who is in control of his life and cannot be lead by others.

Brian K. Estrada, Jr., the respondent's older brother, confirmed that before the Showboat incident his brother was happy-go-lucky, carefree, very trusting, and would believe anything he was told. Since that time the respondent is more settled, more mature, and is a more responsible person. By letter dated July 6, 1990, the respondent's father indicated that his son was a good, reliable and conscientious worker and that he is now demonstrating his maturity and responsibility by operating his own business (R-1).

The respondent's wife, Nadette Irizarry Estrada knew the respondent prior to the Showboat incident. Before the incident, she stated that the respondent was carefree, naive, very trusting, and easily lead by other people. Mrs. Estrada stated that the Showboat incident had a tremendous affect on her husband, and that he is now a more responsible and mature person. After the Showboat incident, they married and the respondent has assumed the responsibility of raising her daughter by a prior marriage. The respondent and his wife are expecting a child shortly.

Pastor Rollie Davis testified that she has known the respondent and his family for approximately eight years and that she is the pastor of the church that the respondent attends. Pastor Davis stated that the respondent is a very honest person and that she trusts him to do things for the church, including making deposits. Pastor Davis stated that the respondent told her about the Showboat incident and that he asked the congregation to pray for him. Pastor Davis feels that the respondent would never do anything he knew to be wrong. When they discussed the incident, Pastor Davis stated that the respondent told her that someone gave him the LOM business cards, asked him to give them to casino guests but that he did

not know what services were offered at the LOM. Mr. Estrada told Pastor Davis that his job was to help the guests and he was very upset that he got into trouble by giving out one business card. Pastor Davis has noted a substantial change in the respondent since the Showboat incident and she feels that he is now a more responsible person.

On his own behalf, Mr. Estrada stated that the motor vehicle accident occurred when he was 20-years old and that during the long period of time it took for him to recover, he felt caged in and that he also felt he had nothing to live for since he had lost his navy career. When he felt better, Mr. Estrada worked for a while at a gas station and cutting grass. He then got a job as a waiter at the Caesars Casino and Hotel. He quit this job after one day since he felt he was not physically capable of performing the work and found the responsibilities to be to emotionally stressful. Thereafter, he got the doorperson job with Showboat and during the approximate eight month period he worked there, he enjoyed the job.

While he was working as a doorperson, Mr. Estrada started to attend Atlantic County College but he had to quit college when he lost his casino job. Since that time, he has been involved with his own construction business, and he hopes to continue this business and to go back to college one day. Mr. Estrada would like to retain his casino hotel employee registration since if his company does not continue to do well, he would like to get another casino position.

While he was employed as a doorperson, Mr. Estrada stated he was naive and that today if he had such a position he would be very careful and would not give out business cards when he did not know exactly what services were offered by the businesses.

The only factual dispute is whether Mr. Estrada knew the LOM business card he gave Mr. Graves was for a house of prostitution. Based on all the evidence presented, it is quite clear that although Mr. Estrada did not personally confirm that the LOM was a house of prostitution, he thought that prostitutes were available there and it was for this reason that he gave the business card to Mr. Graves. Mr. Graves did not use the word "prostitute"; however, it was clear to Mr. Estrada what he wanted and Mr. Estrada thought he was responding to Mr. Graves's request by giving him the LOM business card. As he stated at the hearing, Mr. Estrada felt that it was his job to respond to the questions of the casino guests and, although not mentioned at the hearing, obviously the amount of the tip Mr. Estrada received

from these guests would be dependent, in part, on his ability to accommodate their needs. There was no evidence presented to show that Mr. Estrada knew anything about LOM, whether LOM would accept Mr. Graves, a caucasian as a customer, or that there was any arrangement between Mr. Estrada and LOM whereby he would be compensated for referring customers there.

CONCLUSIONS OF LAW

On behalf of the Division, Deputy Attorney General Ralph L. Fusco argued that the petitioner had shown that the respondent gave the LOM business card to Mr. Graves with the clear intent to accommodate his request for information about prostitutes and therefore the Division had shown that the respondent was guilty of the promotion of prostitution. Based on this conduct, Mr. Fusco argued that the respondent's continued registration would be inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c and 5:12-86g.

On behalf of the respondent, Mr. Eckel argued that the Division had not shown that the respondent was guilty of any criminal conduct. Mr. Eckel argued that Mr. Estrada had accumulated a number of business cards which he distributed to guests in response to their inquiries without knowing anything about the businesses themselves. Mr. Eckel argued that there is a possibility that if Mr. Graves had talked to the LOM owner, he would have been turned down since he was not Oriental. Also, Mr. Eckel argued that the respondent was not thinking but just did not want to get involved when he initially denied giving the business card to Mr. Graves.

In addition, Mr. Eckel argued that the 1985 accident should be considered since it affected the respondent's attitude to his Showboat position. Mr. Fusco disagreed and argued that the accident occurred a substantial period before the Showboat incident and it had no relevancy in the matter. I disagree with Mr. Fusco, and I will consider the effect of this accident on the respondent's attitude and maturity at the time of the Showboat incident.

Based on the facts surrounding the Showboat incident, the fact that the respondent holds a casino hotel employee registration, and the effect on his life of both the 1985 accident and the Showboat incident, Mr. Eckel argued that the respondent's continued registration would not be inimical to the policy of the Casino Control Act. In support of his argument, Mr. Eckel cited the recent Appellate Division's decision in Dunston v. Dept. of Law, 240 N.J. Super. 53 (App. Div. 1990). In

that case, the Appellate Division reversed the Commission's decision to deny relicensing to Ms. Dunston, a cleaning person. Ms. Dunston had taken an unattended cup from the casino floor which contained $63 in coins, and she had denied the act when initially questioned by casino employees. The court noted the fact that Ms. Dunston had an unblemished work record, except for the one incident, and that the incident occurred about four years before the Commission's action.

The Commission has recognized that in deciding an issue involving inimicality, it is necessary to both consider the facts surrounding the alleged criminal offense as well as the respondent's prior and subsequent conduct, i.e., his rehabilitation, Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1986). In order to make a determination relating to inimicality, it is appropriate to consider the following criteria set forth for rehabilitation in N.J.S.A. 5:12-91d:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct:

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

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

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

(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.

It is clearly one of the goals of the Commission to keep illegal activities, such as prostitution, out of the casinos. This goal is frustrated if a casino employee is allowed to give out information about prostitution to casino guests.

As a doorperson, Mr. Estrada held the type of position which placed him in frequent contact with casino guests and guests would be expected to ask doorpersons questions. According to the undisputed testimony of Mr. Estrada, he

was not given any training by Showboat and instead of being told to report incidents of prostitution, Mr. Estrada saw that his supervisors took no action to stop prostitution. By giving Mr. Graves the LOM business card, Mr. Estrada thought he was doing his job - assisting a casino guest - and he also thought there was a good possibility that Mr. Graves would be able to procure a prostitute by using the card. Although Mr. Estrada knew prostitution was illegal, based on his observations at work, he felt it was a vice tolerated by the casino and that the paramount concern was to please the casino guests.

I recognize that this is a civil matter and that the Division has to establish a crime by only a preponderance of evidence. Based on the facts, I **CONCLUDE** that the Division has shown by a slight preponderance of evidence that the respondent was guilty of the promotion of prostitution.

It is clear from the undisputed testimony of Mr. Estrada and his witnesses that the 1985 accident frustrated the respondent's career plans and fostered a carefree attitude as well as indifference to life's responsibilities. Although the respondent was about 24 years old when the Showboat incident occurred, it is evident that he was not yet a mature person.

This Showboat incident was an isolated event and Mr. Estrada has no prior criminal record. Since the incident, he has become a more responsible person, has married and started a family, has involved himself in his church activities and has started his own business. Clearly the respondent has learned by his mistake, and has presented convincing testimony that there will be no repeat of such illegal action.

Having considered all the facts, I **CONCLUDE** that the respondent's continued registration would not be inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c.

Therefore, I **ORDER** that the casino hotel employee registration of the respondent not be revoked.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 22, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

8-24-90
DATE

Katherine Klost
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 28 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

cad

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

None

For the Respondent:

R-1 Letter from Brian K. Estrada, dated July 6, 1990

R-2 Letter from Doctor Frederick J. Nahas, dated September 24, 1985

R-3 Letter from Doctor Frederick J. Nahas, dated December 2, 1985

R-4 Letter from Doctor Frederick J. Nahas, dated August 7, 1987

R--5 Business card holder with enclosed business cards

WITNESSES:

For the Petitioner:

Detective Keith J. Halton
Lieutenant John Medolla
Detective William DiGiuseppe

For the Respondent:

Sonja Estrada
Brian K. Estrada, Jr.
Nadette Irizarry Estrada
Pastor Rollie Davis
Christopher E. Estrada

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-160
LICENSE NO. 053479-21
REGISTRATION NO. 002152-40
OAL DOCKET NO. CCC 09349-89
ORDER NO. 90-49-9

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

Complainant,

v.

PAUL FAULKNER, III,

Respondent.

ORDER

A hearing 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; and the Commission having considered the entire record of these proceedings at its public meeting of December 12, 1990,

IT IS on this 27th day of December 1990, ORDERED that the initial decision is rejected; and

IT IS FURTHER ORDERED that the respondent, Paul Faulkner, III is found disqualified from holding a casino employee license and casino hotel employee registration substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

ORDER NO. 90-49-9

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked but the disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit him to retain his casino hotel employee registration in recognition of the respondent's rehabilitative efforts including:

1. an excellent employment record in the casino industry;
2. rehabilitation from drug addiction;
3. satisfactory completion of probation;
4. volunteer fund raising efforts for the Salvation Army's youth programs; and

IT IS FURTHER ORDERED that the respondent remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91; and

IT IS FURTHER ORDERED that Paul Faulkner, III is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9349-89
AGENCY DKT. NO. 90-160

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
PAUL FAULKNER, III,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner, (Robert J. Del Tufo, Attorney General of New Jersey, attorney)
Stephen A. White, Esq., for respondent

Record Closed: September 10, 1990 Decided: October 24, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

Paul Faulkner, respondent, was born and raised in Atlantic City. His mother was a hard worker but an alcoholic. Respondent never mentioned his father. Respondent had five brothers and a sister. His mother also raised numerous cousins. The family was troubled. Four of the respondent's brothers and his sister, were always on the wrong side of the law. One brother was murdered, another committed suicide. Despite this background, respondent was a good student and a role model; he was never a discipline problem at school. A teacher says he "was always seen going to and from work, participating in athletic activities, helping his mother with family chores." At the age of 16, he began to work at Caesars Hotel

and Casino; at first after school, and then full time. He is now 28 years old and still employed at Caesars. He possesses both a casino hotel registration and a casino employee license. He is a craps dealer. His supervisors describe him as serious and sociable. He is considered to be an asset to the casino. His personnel evaluations mark him as a superior employee. He has been recommended for promotion.

Respondent is a single parent, the custodial parent of a 10 year old girl. He receives no support from the child's mother. He is a homeowner and a community organizer. He volunteers at the Salvation Army. He is a fundraiser, organizing basketball games which benefit Atlantic City youth.

In all respects the respondent appears to be an ideal candidate for relicensure as a casino employee and for reregistration as a casino hotel worker.

Respondent possesses, however, a serious blemish on his otherwise fine record. He has been convicted of possessing marijuana with the intent to distribute it.

In 1988, the respondent became a heavy user of marijuana. He describes himself as having become a "pot head." Like many "pot heads", the respondent began to buy marijuana in ever larger quantities, financing his habit by sharing the marijuana with others which helped defray the expense. Respondent was not a drug dealer in the sense that he peddled marijuana on the streets, but he enabled others, usually friends, to smoke marijuana by sharing his costs. Thus when respondent was arrested in January of 1989, he possessed close to a half pound of marijuana, scales, a morsel of cocaine and $2620 in cash; the usual indicia of a person who distributed marijuana for either fun or profit.

As if this were not enough to tarnish the respondent's record, the circumstances of his arrest further enlarged the stain. While struggling on the floor with the arresting officer inside the respondent's home, respondent called on his girlfriend to let the dogs loose; a pit bull and a boxer locked inside a closet. The fact that the officer was in plain clothes and took the respondent by surprise only partly explains the respondent's violent response. Apparently, the respondent quieted down when the officer placed his revolver adjacent to the respondent's head.

The respondent pled guilty to the offense of possession of marijuana with the intent to distribute, in the third degree. N.J.S.A. 2C:35-5a(1) and b (11). This offense is listed in the Casino Control Act (Act) disqualification criteria. N.J.S.A. 5:12-86c (1). If a person is convicted of one of the enumerated offenses, the person convicted is disqualified from casino employee licensure and registration. N.J.S.A. 5:12-90e and 91b.

The disqualification is not automatic however. If a person demonstrates rehabilitation by clear and convincing evidence, the disqualification does not obtain. N.J.S.A. 5:12-90h and 91d. A licensee, as opposed to a registrant, has an additional burden. A licensee must also prove by clear and convincing evidence that he or she possesses good character, honesty and integrity. N.J.S.A. 5:12-89b2 and 90b. this additional burden is because the licensee is actually employed in a casino setting. A registrant is not permitted to work on the casino floor. N.J.S.A. 5:12-7 and 8.

All of these issues were focused upon the respondent when his arrest and conviction came to the attention of the Division of Gaming Enforcement (Division), which presents matters before the Casino Control Commission (Commission). N.J.S.A. 5:12-76.

A complaint was filed by the Division with the Commission on November 9, 1989 seeking revocation of the respondent's license and registration based on the respondent's indictment for possession of marijuana with the intent to distribute.

The respondent requested a hearing and on December 6, 1989, the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 5:12-107.

A prehearing conference identified the legal and factual issues referred to above for resolution at a plenary hearing; i.e., disqualification, rehabilitation and good character. The plenary hearing convened on September 10, 1990.

At the plenary hearing, the respondent stipulated that he was convicted of N.J.S.A. 35-5a(1) in the third degree, possession of an ounce or more of marijuana, with the intent to distribute. I therefore **CONCLUDE** that the respondent is

disqualified from casino employee licensure and hotel employee registration unless saved from such disqualification by rehabilitation.

By way of rehabilitation and character evidence, the respondent introduced letters from two probation officers. These letters are unusual because probation officers rarely attempt to predict the future. Most merely recite that a probationer was or was not prompt for his or her appointments; did or did not obtain employment, and either was or was not terminated from probation with improvement. Probation Officer Susan L. Silver, however, describes the respondent as "extremely cooperative." She also relates that he "has expressed remorse." She predicts that he will be "an asset to any employer." Probation Officer Crystal Brown writes that the respondent was terminated from probation on March 20, 1990, in good standing. She opines that he is a good candidate "for licensure in the casino setting." She also describes him as a "wonderful asset to the working circuit."

In addition to these tributes, the respondent produced hard evidence that he is no longer using drugs. He submitted a lab report prepared April 13, 1990 indicating the absence in his system of ten drugs including THC. But the most important evidence of the respondent's rehabilitation was his response to jail and his devotion to his daughter. He said that he was "scared straight" by his short jail experience. He has described that experience to his daughter and uses his own legal difficulties as an example to her to say "no" to drugs. Respondent's daughter accompanied him to the hearing and gave her father moral support as she absorbed the lesson that drug use is fraught with problems; social, physical and legal.

The respondent's behavior during the last few months of 1988, and on the night in January 1989 when he was arrested, is not excusable. But measured against his entire life, it does not compel the conclusion that he is unlicensable. It is precisely because the public perceives drugs as capable of producing violent and aberrant behavior that society feels compelled to make their use and possession illegal.

The respondent's good behavior during probation, his fine work record during his life time, his exercise of family responsibility, his pride of home ownership, all indicate that the respondent is rehabilitated. The factors required by the Act to be considered clearly indicate this. N.J.S.A. 5:12-90h and 91d.

1. The respondent is a craps dealer. There is no evidence that the respondent ever used or distributed drugs at a casino. He expressly denies ever having done so. Respondent's work product apparently did not suffer as a result of his drug use.

2. The offense was serious and was dealt with by the courts in a serious fashion. The respondent has completed his sentence.

3. The respondent was a "pot head" and shared marijuana with others in order to defray expense.

4. The offense occurred in January of 1989.

5. The respondent was 27 years old when he committed the crime.

6. The offense was not repeated. However, for a period of several months prior to respondent's arrest in January of 1989, he engaged in heavy drug use and sold drugs to friends.

7. There was no evidence that social conditions contributed to the offense.

8. The Atlantic County probation department reports clearly indicate that the respondent is rehabilitated. His conduct since the arrest corroborates the probation report. Respondent's supervisor considers him a superior employee and a candidate for promotion.

I **CONCLUDE** that the respondent is rehabilitated pursuant to N.J.S.A. 5:12-90h and 91d.

I further **CONCLUDE** that the respondent possesses the requisite good character, honesty and integrity for casino employee licensure. N.J.S.A. 5:12-89b(2) and 90b.

I **ORDER** that the complaint filed herein be **DISMISSED**.

I hereby **FILE** my initial decision with the **CASINO CONTROL COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is authorized to make a final decision in this matter. If the Casino Control Commission does not adopt, modify or reject this decision within 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.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHAIR OF THE CASINO CONTROL COMMISSION**, 3131 Princeton Pike, Building 5, CN 208, Trenton, New Jersey 08625, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 24, 1990
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

10-30-90
DATE

Dolores Dost
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 01 1990
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Detective John Silver
Paul Faulkner

For the Respondent:

Paul Faulkner

EXHIBIT LIST

For the Petitioner:

P-1 Request for examination of evidence
P-2 New Jersey State Police Investigation Report
P-3 Pleasantville Police Department Operation report
P-4 Indictment #89-02-0377-A-CP
P-5 Judgment of conviction and Order for Commitment

For the Respondent:

R-1 Package of documents, containing: Letter, dated January 11, 1990, from Susan L. Silver, Atlantic County Probation Department; Letter, dated march 27, 1990, from Crystal Brown, Atlantic County Probation Department; Letter of recommendation, dated April 5, 1990, from O.C. Edwards; Letter of recommendation, dated April 2, 1990, from Bruce G. Coffas; Letter of recommendation, dated April 6, 1990, from Joseph R. Bachen; Performance evaluation, Caesars; Laboratory report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-303
LICENSE NOS. 002591-11;
03352-21 (Inactive)
OAL DOCKET NO. CCC 2075-89
ORDER NO. 90-35-6

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

Complainant,

v.

ORDER

VINCENT L. FARINA

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; and the Commission having considered the entire record of these proceedings at its public meeting of September 5, 1990,

IT IS on this 21st day of September 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Vincent L. Farina 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /rm
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2075-89
AGENCY DKT. NO. 87-303

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

v.

VINCENT L. FARINA,
Respondent.

R. Lane Stebbins, Deputy Attorney General appearing for the Division (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Charles H. Jurman, Esq., for respondent

Record Closed: January 18, 1990 Decided: July 16, 1990

BEFORE **RICHARD J. MURPHY,** ALJ:

STATEMENT OF THE CASE, ISSUES AND PROCEDURAL HISTORY

The New Jersey Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed an amended complaint under N.J.S.A. 5:12-86, 89, 90-91, 107-108, and 129-130, with the Casino Control Commission (Commission) on March 2, 1988 seeking to revoke the casino key employee license (No. 2591-11) held by Vincent L. Farina because of his indictment in early 1987 for theft (third degree), conspiracy to commit theft, commercial bribery, misconduct by a corporate official, and theft by deception based on his alleged involvement in an illegal scheme involving complimentaries and rating cards, while he was employed as a floorperson at Caesars Hotel and Casino. Those charges were later dismissed, after Mr. Farina entered the Pretrial Intervention Program (PTI).

The issues to be resolved in this proceeding, as set forth in the prehearing order are:

1. Whether the respondent Vincent L. Farina is disqualified from holding a casino key employee license under N.J.S.A. 5:12-86c(1) and 86g because he committed acts constituting the offenses of theft in the third degree and conspiracy, notwithstanding the dismissal of those charges through PTI;

2. Whether the respondent Vincent L. Farino is disqualified pursuant to N.J.S.A. 5:12-86c2 and 86g in that his commission of acts constituted commercial bribery, misconduct by a corporate official, and theft, make his licensure as a casino key employee inimical to the policies of the Casino Control Act and to casino operations, notwithstanding the dismissal of those charges through PTI;

3. Whether the respondent key licensee can establish by clear and convincing evidence his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2), including consideration of the factors of rehabilitation as set forth in N.J.S.A. 5:12-90h.[1]

FACTUAL DISCUSSION AND FINDINGS

Vincent L. Farina, who is not currently employed in the casino industry, hold a casino key employee license and was previously employed by the Boardwalk Regency Corporation, trading (t/a) as Caesars Boardwalk Regency Hotel & Casino (Caesars). He

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1 Procedural History The Commission filed this matter with the Office of Administrative Law on March 22, 1989 for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq., and the case was preheard on May 5, 1989, with the prehearing order issued on May 8, 1989. The plenary hearing was held on August 31, 1989 and completed on January 18, 1990, at which time the record closed. The due date for submission of the initial decision was extended for good cause not related to this case. I regret any hardship or inconvenience that this unavoidable delay may have caused the parties.

was indicted on February 6, 1987 for the crimes of theft by deception, theft of services, misconduct of a corporate official, commercial bribery and tampering with public information. Those charges were ultimately dismissed on December 5, 1988 under New Jersey Court Rule 3:28, on the recommendation of the coordinator of the Pretrial Intervention Program (PTI). As part of the order of dismissal, the clerk of Atlantic County was directed to mark the court record as "complaint dismissed — matter adjusted".

Before dismissal pursuant to PTI, the matter was presented to a State Grand Jury which returned a superseding indictment (No. 189-87-8(2) against Farina and one Richard Leosi, for conspiracy to commit theft (third degree), commercial bribery (third degree), misconduct by a corporate official (third degree) and theft by deception (third degree) in violation of N.J.S.A. 2C:5-2, 2C:20-3, 2C:21-10, 2C:21-9 and 2C:20-4, respectively. The indictment charged that Farina, who was then working under a casino key employee license at Caesars, conspired with Richard Leosi to arrange to have an unnamed guest register as a complimentary guest of Caesars, occupy a room, and receive complimentary services including accommodations, food, beverages and entertainment, and later pay Leosi and Farina for the "comp". Respondent was accused of engaging in this activity between May 1, 1985 and December 31 of that year.

The indictment specifically alleges that the money was for the most part received by Leosi, but at least $300 was received by Farina on or about November 17, 1985 and again on November 25 of that year. Farina and Leosi were also accused of theft in that they ". . . did knowingly and unlawfully take and exercise unlawful control over movable and immovable property of another, that is, food and beverages and hotel rooms with a value over $501, the property of Boardwalk Regency Corporation, traded as Caesars Boardwalk Regency Hotel Casino, and Eileen Cohen with the purpose to deprive the owner or owners thereof . . . ." (Indictment at 10). Farina and Leosi were charged in the third count with misconduct of a corporate official in the third degree in that they ". . . . did purposely and knowingly use, control and operate Boardwalk Regency Corporation trading as Caesars Boardwalk Regency Hotel Casino, a corporation of the State of New Jersey for the furtherance of a criminal object, to wit: to commit the crimes of commercial bribery and theft . . . ." (Indictment at 10). The respondent and Richard Leosi were also charged with commercial bribery for unlawfully soliciting, accepting and agreeing to accept to benefit in the form of United States currency in an amount in excess of $1000 but less than $75,000 as consideration for knowingly violating

and agreeing to violate a duty of fidelity to which Farina was subject as employee, manager and participant in the direction of the affairs of Boardwalk Regency Corporation, in exchange for providing complimentary services of a value in excess of $1000 but less than $75,000. The fifth and final count of the indictment charge theft by deception as stated that Farina and Leosi ". . . did purposely obtain property of another by deception, that is, United States currency in excess of $500, from Eileen Cohen by creating and enforcing the false impressions that Eileen Cohen only was entitled to complimentary services from Boardwalk Regency Corporation . . by virtue of having paid Vincent Farina and Richard Leosi for said services, whereas in truth and in fact . . . Eileen Cohen was not entitled to complimentary services from Caesars by virtue of having paid . . . ." (Indictment at 13).

All of these charges were dismissed after Farina entered the Pretrial Intervention Program, without admitting his guilt as charged. Farina offered the following account of his background at Caesars and the genesis of the charges. In 1979, he was licensed as a craps dealer and was employed at Caesars. He received several upgrades in his casino employee license, permitting him to serve as a box person, and later as a floor person, with supervisory responsibilities. He later applied for and received a casino key employee license and in 1985 was working as a craps pit boss at Caesars, with supervision of the total craps pit operation, including dispensing of complimentaries ("comps") to deserving patrons. The craps pit at the Caesars then had 8 tables, and the pit boss's function was to supervise all of the floor people, some 32 dealers, and 10 to 20 box persons. In essence, the pit boss "runs" the pit, with all operations and "comp" system under his or her supervision and guidance. The pit boss has no independent authority to grant comps in the form of room, food, or beverages, which are given to "rated" players, based on a rating determined by floorpersons based on the patron's play, including average bet and time at the tables. The "comp" policy had changed at Caesars four to five times during Farina's tenure at the casino, although the basic information of average bet and time of play remained the same basis for the rating, done by the floorpersons, who convey this information to the pit clerk and pit boss, who has a position (or desk) in the pit. Floorpersons simply hand the rating cards to the pit clerk, and the information is entered into the computer. The pit boss's function is to determine qualifications regarding players based on ratings by floorpersons and thus determine entitlement to comps. Originally, Farina had some discretion to do this, but later the comps came directly from a computerized system. The comps are based on recent ratings, which the pit boss would review, and Farina stated that, on a scale of one to ten, this aspect of the pit boss's function ranked eighth in importance.

Farina identified several of the other individuals involved in this controversy. Nelson Italiano, was formerly Farina's direct supervisor at Caesars, and the holder of a casino key employee license. Italiano was pit boss, when the respondent served as a craps dealer, and the two often worked together. Richard Leosi, also named in the indictment, was the respondent's first craps instructor at Caesars' gaming school, and usually functioned as respondent's direct supervisor on the job, although, by the time Farina became pit boss, Leosi had left the employ of the casino. Harold Harmon dealt craps when the respondent was a dealer and later became a floorperson when the respondent was on the floor. There was a time when the respondent was pit boss and Harmon was a floor dealer. Eileen Cohen, characterized in the indictment as the victim of this "comp" scam, was a rated craps player and consistent customer of Caesars. Respondent spoke to her in circumstances off the casino floor, but claims that he never met with her in the casino to discuss comps and she denies that she ever approached him for that purpose. He claims that he never issued any comps for her and his only contact was to inquire of her as to availability of automatic lift chairs for his handicapped 80 year old mother, since Ms. Cohen was in the business of selling such equipment. Leosi, according to Farina, received cash from Cohen and falsified the ratings in an attempt to generate comps. Cohen, who was a rated player entitled to comps, needed no assistance to obtain them and Farina characterized her as a "good, well known" rated player. Farina may have asked Harmon or another floorperson to rate Cohen, but this was in the course of his duties to identify and rate "big players". He also states that Italiano may have asked Harmon to rate players, but he is unaware of this. Respondent claims that he never asked Harmon to do anything unethical or illegal.

Leosi, Cohen, and Harmon did not testify in this proceeding. Harmon had previously testified in OAL Dkt. No. CCC 7505-88, and admitted that Italiano had asked him to do some illegal and unethical things as to comps, including signing ratings. (See P-1 at 18 to 23). Harmon also claims that Farina asked him to sign comps ratings in late 1985, but Farina maintains that this was the first occasion that he did so. (P-1, at 20, lines 9-22). Although Harmon claims that he received money for rating cards, and signed those cards two to three times for Farina, respondent denies that he ever paid Harmon to sign cards, and never asked him to sign them for a fictitious player, or for Eileen Cohen. (P-1 at 23, 1 at 17). Harmon's license application was later denied by the Commission.

All of Cohen's comps were "RFB" (room-food-beverage) and were provided by VIP services. Farina denies asking Leosi to contact Cohen, and also denies that he ever contacted her to arrange floor meetings or that he received cash payments from her. He admits that he was suspended for two days by Caesars, but later reinstated and reimbursed, and denies that Cohen ever questioned him as to why she was receiving comps.

Both Harmon and Cohen were later given immunity and made statements to the New Jersey State Police incriminating Leosi and Farina:

> FEBRUARY 21, 1986: On this date, under the terms of an agreement, in which Eileen Cohen would not be prosecuted for her part in this crime, which was worked out between DAG B. Scott of the Criminal Justice Department and Joseph Gindhart, Esq. who is Cohen's attorney, the undersigned met with Eileen Cohen in the presence of her attorney and DAG Scott. The meeting was held in Gindhart's office on New York Ave., Atlantic City, N.J.
>
> During the meeting, Cohen gave the undersigned the following account of her activities regarding this crime:
>
> > Cohen was a slot player at Caesar during the year of 1984. She made numerous day trips to the casino for the purpose of playing slots. She was rated as a slot player and did receive low level complimentary services based on her slot ratings. In May or June of 1985, Cohen began to play occasionally on the craps tables. On evening in this time period while playing craps, she met a unknown male player who said that he was going to a show and dinner with his wife on a comp from the casino. Cohen asked the subject how she could receive complimentary services such as shows, dinners and hotel rooms. The subject told her to see one of the pit personnel and then pointed to a pit boss named Vince and said, "such as him". Cohen approached this pit boss who she later learned was Vincent Farina and asked him how she could go about receiving complimentary services. Farina asked Cohen her name and phone number which she supplied and then told her that someone would contact her.
> >
> > One evening during the following week, Cohen received a phone call from a subject who identified himself as Richard Leose. Leose told Cohen that he was a friend of Farina and although he, (Leose), was no longer working at Caesar's, he could make it possible for Cohen to start receiving the room, food and beverage complimentary services (RFB comps). Leose told Cohen that she would be the first woman that he has

ever used in this arrangement. Leose asked Cohen for her date of birth wich she gave him and then he gave the telephone number for the Caesar's Marketing Department and told her that when she wanted to come to Caesar's as a comped quest, she should just call the marketing department and give them her name and date of birth.

Approximately two weeks later which was sometime in June of 1985, Cohen called the Caesar's marketing department and made arrangements to stay at Caesar's as a comped quest the following Saturday night. Several days later, Cohen received a second telephone call at her home on Rennard St., Phila., Pa. from Leose who said that he was aware of the fact that Cohen was coming to Caesar's on Saturday night. Leose told her that he wanted her to meet him on Sunday morning at 10:00 AM outside the casino on Arkansas Avenue by Aubrey's Restaurant in his car. Leose described himself and his car to Cohen.

Cohen did in fact go to Caesar's as per the arrangements made with the marketing department and did stay over Saturday night as a comped quest. On Sunday morning at 10:00AM she went out onto Arkansas Ave. and met with Leose in his car which was a chocolate brown Imperial. During the meeting, Leose questioned Cohen as to whether her accommodations were satisfactory. After Cohen told Leose that everything was to her liking, Leose told her that if she wanted to have similar comps extended to her in the future, she would have to pay Leose $200.00 for every Saturday night that she stayed and that if she wanted her stay to include Friday night it would cost an additional $100.00 or a total of $300.00 for the two nights. Leose told her that she would make the payments to him at 10:00AM on Sunday mornings in his car at the same location on Arkansas Ave.

During the remainder of the month of June and the beginning of the month of July, Cohen and her two daughters stayed every Saturday night at the Caesar's Hotel as RFB comped quest under the agreement she had with Leose. Every Sunday morning, she would meet Leose in his car and pay him $200.00 in cash. Sometime in the month of July, Cohen got tired of fighting the traffic from Philadelphia to Atlantic City on Saturdays so she increase her stat to include Friday nights at which time she increased her Sunday morning cash payments to leose to $300.00. Cohen and her two daughters, utilized the arrangements with Leose to stay at Caesar's almost every weekend for the remainder of the summer.

On August 2, 1985, Cohen moved from her 10831 Rennard St., Philadelphia, Pa. address with phone number (215-) to 830 Hendrix St. Philadelphia, Pa. with

During her weekend visits to Caesar's, on one occasion Cohen received a call from Leose in her room at which time Leose told her that she would not be able to meet her on Sunday morning as per their arrangement. Leose told her that he would meet her the following Sunday at which time she would pay him $600.00 for both weekends. Cohen did meet him the following Sunday at which time she paid him for both weekends. On one other occasion which Cohen could not remember the date, she had to cancel her plans to stay at Caesar's over the weekend due to the fact that she had to go to a funneral. Cohen called either Leose or Farina at their homes at which time the line was busy. She could not remember whose number was busy but she did reach the other at his home and she advised him that she would not be coming to Caesar's that particular weekend. Leose and Farina had both supplied Cohen with their home phone numbers.

Sometime in November on 1985, Farina called Cohen at her home in Hendrix St., Philadelphia and told her that Leose was going on vacation for two weeks and that when she came to Caesar's while Leose was away, she was to meet with Farina and make the payments to him. Farina told her to meet him at 1:30 AM on Saturday nights in a hallway in Caesar's to make the payment. Farina instructed her to have the case secreted in her hand and to make the exchange while shaking hands. Cohen met with Farina in the hallway as per his instructions and paid him the required cash during the next two weekends.

Sometime later in December of 1985 just before the New Years Holiday, Cohen received a call from Leose at her business which is E & S Comfort located at 1661 Republic Road, Huntington Valley, Pa. Leose told her that he had to talk to her but could not talk over the phone. He stated that he would come to her office the next day. Leose did meet with Cohen in her office the following day at which time Leose told her thatr Farina and two other people had been suspended from Caesar's due to an investigation. Cohen questioned Leose as to what she had to do with any investigation being conducted at Caesar's. Leose told her that Farina and other people were doing things for her in order that she could receive the benefits of the comps she has been receiving. Leose would not tell Cohen what Farina and the other were doing for her. Leose told her that

> someone might contact her regarding the investigation. Leose then told her that his boys were hurting for money and asked her to pay him in advance for the upcoming New Years Holiday which she was scheduled to spend at Caesars. Cohen paid Leose $500.00 cash at that time for her New Years Holiday accommodations.
>
> Cohen met with Leose again of December 30, 985 in his car on Arkansas Ave. Leose told her that Farina and the two other people that had been suspended were back to work. He told her that everything was now alright. He told her that the investigation would probably continue and that if she was questioned by anyone, she should say nothing.
>
> At the conclusion of Cohen's aforementioned account of her activities, Cohen showed the undersigned a card on which she had written the home phone number of Richard Leose. The number was 390-3508. She also showed the undersigned a number 390-1485 which was written on the back of her check book. She said that the latter number was Farina's home phone number.
>
> Cohen stated that she had no contact with Leose or Farina since she left Caesar's Hotel on January 31, 1986. (P-2)(emphasis added) [sic].

Under the comp scam created by Leosi, with the assistance of Farina as described above, Eileen Cohen was, in effect, paying for comps that her rated play would have entitled her to receive on a purely complimentary basis. Following receipt of the police reports, Leosi and Farina were indicted in February of 1987, and a superseding indictment was later handed up by a state grand jury, as detailed above.

Ms. Cohen, who was not produced to testify at the hearing, gave essentially the same statement in her testimony before the State Grand Jury on June 20, 1986 in Trenton. (P-6). There, she stated that she introduced herself to one of Caesars' pit bosses (whom she later learned was Vincent Farina) and inquired as to how she could receive comps. (P-6 at 12 to 13). She claims that Farina asked her for her phone number and told her that he knew of someone who could help her out in this regard. (Ibid.). She heard from Richard Leosi a week or two later by telephone, Leosi stated that he had received Ms. Cohen's name from Farina, and understood that she was interested in getting "comped". (P-6 at 14). Leosi also later called and told her that "everything was set up" and that all she had to do was call VIP services at Caesars, identify herself, and she would receive the RF&B (room-food-beverage) (P-6 at 16, line 9-13). Cohen checked into the casino and

had dinner. Leosi subsequently called her and asked her to meet him outside the Arby's Restaurant across the street from Caesars, and asked if everything was satisfactory. He then advised Cohen that she would be charged $200.00 for an overnight stay and $300.00 for a full weekend, for room, meals and entertainment at Caesars. In her first meeting she paid Leosi $200.00 (P-6 at 24). In June or July of 1985 she came down to the casino every other week and made payment to Leosi on those occasions. (Ibid. at 25 to 27). When Leosi had to go away for a couple of weeks, she was instructed by him to meet Farina and made the payments to respondent. (Ibid. at 27 to 28). She also states that Farina contacted her and inquired as to what she was able to offer from her business for his mother. (Ibid. at 28). That was the extent of Farina's involvement in this scam whereby Ms. Cohen was hoodwinked into paying under the table for comps that her rated play entitled her to receive free of charge.

Farina attacks Cohen's testimony as obtained through immunity and denies that he ever personally issued any comp for Eileen Cohen: he also states that she never gave him any money. He denies having changed her rating chards and states that "she never needed anything", because she was a rated craps player and well known. This was recognized by Linda Smith, who was a floorperson in Caesars dice department as a dual rate pit boss. (R-2). In her statement on May 30, 1986 to DGE, Smith stated that she recognized Eileen Cohen as being a good player, who was betting considerable money for a substantial length of time, and also that she knew Vincent Farina, but offered no statement as to Farina's involvment. (Ibid.). A review of statements given by other Caesars employees to DGE did not reveal any statements incriminating Farina in either a suspected scam or false player ratings, in which persons were given ratings of other players. (R-2 to R-3). Jay Dee Clayton, a dual rate pit boss/floorperson at Caesars, gave a statement to DGE on May 30, 1986 stating that Harold Harmon took advantage of a situation where pit bosses were signing blank comps to set up a scam being run with a cocktail waitress in a casino restaurant. (R-13 at 13). Under the scam, Harmon would provide the comp to patrons for cash, which would be split. Farina's name was on some of the "comps" as pit boss, but he was exonerated after being suspended for two days in connection with this matter. Caesars changed procedures on the presigned comps after this problem was detected, and Farina was reinstated.

Farina admits that he knew Eileen Cohen, whom he characterized as a recognized player, and he concedes that he introduced himself and asked if there was anything he could do for her as pit boss, after he saw her gambling considerable amounts

of money. Farina stated that the comp system was intricate and that the pit boss was allowed to comp to a low limit for meals and the like, but that room, transportation and weekend packages were handled through host services, entitled "VIP" services. He claims that he offered limited comps to Ms. Cohen, but she was already staying on an RFB comp (room-food-beverage) and receiving more than he could offer, as pit boss. In fact, he denies that he ever gave Ms. Cohen anything she should not have received, and also denies that he was involved in any "comp" scam as to Ms. Cohen. He notes that Harmon was terminated at Caesars, after his part in the "comp" scam was revealed.

Harmon admitted in testimony for the Casino Control Commission that Italiano had asked him to commit illegal or unethical acts in 1981 or 1982, when he asked him to sign rating cards, in order to dispense comps. (P-1 at 18). Harmon also accused Farina of paying him as much as $80 for signing rating cards. (P-1 at 22 to 24). Farina denies any such payments to Harmon.

I **FIND**, as a matter of fact, based on the testimony given to the State Grand Jury on June 20, 1986 by Eileen Cohen (P-6), that she did initially seek comps from pit boss Vincent Farina, who referred her to Richard Leosi, and that Leosi made arrangements for her to pay for comps that she was, in fact, entitled as a rated player to receive and gave his number and Farina's number to make arrangements. (P-6 at 14 through 22). I further **FIND** Ms. Cohen made payments to Richard Leosi in exchange for comps and also made such payments to Vincent Farina on several occasions in the summer of 1985 when Leosi was not available. Cohen's testimony in this regard was given under oath in a State Grand Jury proceeding and her statements were straightforward and believable, notwithstanding that Ms. Cohen was engaged in making illegal payments for comps, to which she mistakenly believed she was not lawfully entitled. Although Ms. Cohen was engaged in an unlawful activity herself and offered immunity, she was, more or less, the "victim" of the scam and was testifying, essentially, from the victim's perspective. She had no casino license to protect and no interest in lying to protect herself in light of her immunity to prosecution. Farina, on the other hand, testified at the hearing in this case under the threat of permanently losing his casino key employee license, and thus had considerable incentive to deny any wrongdoing.

As to Harold Harmon, Farina's coworker, who was also granted immunity, I **FIND** that his statements as to receiving payments from Farina in return for signing rating cards were less credible than Cohen's and Farina's, given his considerable interest

in his prospects for a casino employee license and also were less believable because he did not even recall the sum that he alleged that Farina had given him (P-1, at 22, lines 6 to 10). Given the nature of Harmon's testimony , as well as his obvious interest in protecting his license, I do not **FIND** his claim of payment from Farina to be credible and **FIND** that the Division of Gaming Enforcement has failed to bear its burden of proof on this point. Unlike Cohen, who was essentially the victim in this instance and could have easily stopped at naming Richard Leosi as the culprit, Harmon had a greater interest in shifting blame to Farina and the testimony given by him in the context of his licensing proceeding (P-1) must be read more skeptically, with that interst in mind. (P-1). I found the live testimony of Vincent Farina more credible than the self-interested statements of Harmon in his OAL licensing proceeding. I also note that Cohen was testifying before a State Grand Jury, whereas Harmon testified before an ALJ at OAL in a civil context, which is a considerably less forbidding and imposing setting.

As indicated, no statements, prior testimony or live testimony was presented from Richard Leosi, who I **FIND** was the prime mover and mastermind of the comp scam.

There is no dispute as to the above facts, except as otherwise discussed and found, and I so **FIND.**

I also **FIND** that, other than the matter of this comp scam, respondent Vincent Farina had a good work record in the casino industry.

LEGAL DISCUSSION AND CONCLUSIONS

At issue, is whether Vincent Farina is disqualified from holding a casino key employee license under N.J.S.A. 5:12-86c1 and 86g because of his conduct amounting to theft in the third degree and conspiracy, and whether he is disqualified under N.J.S.A. 5:12-86c2 and 86g because of his acts constituting commercial bribery, misconduct by a corporate official, and theft. In addition to these issues of disqualification, the ultimate issue is whether Vincent Farina can establish his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2), considering the factors of rehabilitation as set forth in 90h.

Counsel for Farina argues that his client testified candidly and honestly, and slights the Division's case as resting on the dubious testimony of Eileen Cohen and Harold Harmon, who are both "admitted scammers" and, the latter of whom has already lost his

casino employee license. Farina stands by his story that his only personal contact with Eileen Cohen was fielding her questions about "comps", and later asking her the price of special handicapped wheelchairs for his aging mother. He points to testimony of other casino employees, which failed to incriminate him. He cites his otherwise long and untroubled work record in the casino industry, and notes that Cohen and Harmon, who both had immunity from prosecution, "would say anything." Respondent maintains the Division has failed to carry its burden of proof, which is to prove disqualification by a preponderance of the believable evidence.

The Division defends Cohen's credibility, and submits that she had no reason to lie, as to Farina. The Division maintains that it has established the elements of theft by deception, and may rest on the testimony and statements provided by Cohen and Harmon. It argues that Harmon's testimony before OAL is believable because it was against his interest, in that he admitted to accepting money from Farina in exchange for rating players. The Division defends its reliance on hearsay statements under the authority of N.J.S.A. 5:12-107a(6).

As indicated above, I **FIND** as a matter of fact that Vincent Farina accepted payments from Eileen Cohen as charged, but that the Division has failed to prove by a preponderance of the believable evidence that Farina made the payment to Harmon, as claimed. In any event, the payment to Harmon was not part of the indictment against Farina and Leosi. (P-5).

Vincent Farina did not plead guilty to the indictment, which was dismissed after he entered the Pretrial Intervention Program. Without a guilty plea or a judgment of conviction on the charges, the Division is left to its proofs as to Farina's conduct in order to establish disqualification and to question his good character, honesty and integrity. The facts thus found above show that Farina was involved in a scheme which originally was to seek and accept payments from Eileen Cohen in return for comps, to which she was already entitled by virtue of her rated play at Caesars.

But has the Division proven by a proponderance of the believable evidence that respondent engaged in acts constituting the offenses of conspiracy under N.J.S.A. 2C:5-2 or theft in the third degree, in violation of N.J.S.A. 20-3, both of which are enumerated disqualifiers under N.J.S.A. 5:12-86c(1)? Conspiracy is defined in the Code of Criminal Justice in the following manner:

> [a] person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:
>
> (1) agrees with such other person or persons that they or one of more then will engage in conduct which constitutes such crime or attempt or solicitation to commit such crimes; or
>
> (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime . . .
>
> d. overt act. No person may be convicted of conspiracy to commit a crime other than a crime of the first or second degree or the distribution or possession with intent to distribute a controlled dangerous substance unless an overt act in pursuance of such conspiracy is proved to have been done by him or by a person with whom he conspires. . . . N.J.S.A. 2C:5-2 (emphasis).

This licensure proceeding is civil in nature and the Division is, thus, required to prove the disqualifying conduct only by a preponderance of the believable evidence. In this case, there is no direct evidence of an agreement between Vincent Farina and Richard Leosi to charge Eileen Cohen for comps to which she was entitled by her play, but such an agreement may be inferred under the circumstances, from Farina'a actions in meeting Eileen Cohen and in accepting payment from her for comps which I conclude constitutes an overt act under N.J.S.A. 2C:5-2 and also constitutes proof of the agreement between Farina and Leosi, since Farina's actions could only have come about through agreement with Leosi under the circumstances. I **CONCLUDE**, therefore, that Vincent Farina is disqualified pursuant to N.J.S.A. 5:12-86c(1) for engaging in conduct constituting the offense of conspiracy to commit the offense of theft in the third degree, notwithstanding that this conduct was not prosecuted as per N.J.S.A. 5:12-86g.

I further **CONCLUDE** that Vincent Farina, by accepting payments from Eileen Cohen, engaged in conduct constituting theft by unlawful taking in violation of N.J.S.A. 2C:20-3, providing that "[a] person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property for the purposes of depriving him thereof." The above findings of fact support the conclusion that Farina engaged in theft of Eileen Cohen and he is subject to disqualification for that conduct under N.J.S.A. 5:12-86d1, 86g, despite the absence of prosecution and the dismissal of the charges.

The Division also argues that it has proven that Farina involved in conduct constituting commercial bribery, misconduct by a corporate official, and theft by deception, all of which are disqualifying under N.J.S.A. 5:12-86c(2) and that they indicate that his licensure would be inimical to the policy of the Act and to casino operations.

Commercial bribery is defined in the following manner by the Code of Criminal Justice:

> (a) A person commits a crime if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:
>
> . . . an officer, director, manager or other participant in the direction of the affairs of an incorporated or unincorporated association . . . if the benefit offered, conferred, or agreed to be conferred, solicited, accepted or agreed to be accepted in violation of this section as $75,000 or more, the offender is guilty of a crime of the second degree. If the benefit exceeds $1000, but is less that $75,000 the offender is guilty of a crime of the third degree. If the benefit is $1000 or less, the offender is guilty of a crime of the fourth degree. N.J.S.A. 2C:21-10 (emphasis added).

Under the indictment, Farina is charged with accepting a total of $600 from Eileen Cohen in November of 1985, and I **FIND** that the Division has proven that allegation by a preponderance of the believable evidence. (P-5 at 7 to 9). Although the scam by Leosi and Farina involved much more than $600, the evidence submitted proves only that Farina took $600 from Ms. Cohen and on that basis I **CONCLUDE** that he is guilty of a crime of the fourth degree in accepting as a benefit for knowingly violating his duty of fidelity arising from his position as a manager or participant in the affairs of Caesars under N.J.S.A. 2C:21-10.

As to the charge of misconduct by a corporate official, the Code of Criminal Justice defines this as follows:

> [a] person is guilty of a crime when . . . he purposely and knowingly uses, controls or operates a corporation for the furtherance of promotion of any criminal object. N.J.S.A. 2C:21-9(c). If the benefit derived is $1000 or less, the offender is guilty of a crime of the fourth degree.

Based on the above findings as to respondent's acceptance of payments from Eileen Cohen, I **CONCLUDE** that Vincent Farina did engage in misconduct by a corporate official, by using his position as a pit boss at Caesars to further the promotion of the criminal object of stealing from Ms. Cohen.

The final claim by the Division is that Farina's conduct constituted theft by deception in violation of N.J.S.A. 2C:20-4, which provides:

> [a] person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise . . .
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom stands in a fiduciary or confidential relationship.(emphasis added).

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or proffering or exaggeration by statements unlikely to deceive ordinary persons in the group addressed. Although there is evidence that Richard Leosi did intentionally create a false impression in Eileen Cohen's mind as to her entitlement to comps and need to make payments to receive them, there is insufficient evidence to conclude that Farina expressly created or reinforced this false impression. Obviously, his action in accepting payment from Ms. Cohen did have the effect of reinforcing that false impression, but there is insufficient evidence linking Farina to the conversations between Leosi and Cohen, at which the false impression was put forward by Leosi. On that basis, I **CONCLUDE** that the Division has failed to show that Vincent Farina engaged in conduct constituting theft by deception within the meaning of N.J.S.A. 2C:20-4.

Consideration of the question of inimicality as to proven conduct of commercial bribery and misconduct by a corporate official also requires application of the fact as to rehabilitation, as set forth in N.J.S.A. 5:12-90h. See, Division of Gaming

Enforcement v. Davis, 8 N.J.A.R. 301, 314 (1985). Although casino key employees are not specifically given the benefit of rehabilitation on innumerated disqualifying offenses under N.J.S.A. 5:12-86c(1), those factors are relevant to the determination of both inimicality and the issue of good character, honesty and integrity and I so **CONCLUDE** under the authority of Dunston v. Division of Gaming Enforcement, Superior Court of New Jersey, Appellate Division, decided April 10, 1990, A-197-89T3. The factors of rehabilitation under N.J.S.A. 5:12-90h are as follows:

> [i]n determining whether the applicant has affirmatively demonstrated his [or her] 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 or conduct;
>
> (3) The circumstances under which the offense or conduct occurred;
>
> (4) The date of the offense or conduct;
>
> (5) The age of the applicant when the offense or conduct was committed;
>
> (6) Whether the offense or conduct was an isolated or repeated incident;
>
> (7) Any social conditions which may have contributed to the offense or conduct;
>
> (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 corrections work-release programs, or the recommendation of persons who have or have had the applicant under their supervision. (emphasis added).

The respondent's duties as pit boss are one of the most sensitive and substantial on the casino floor and involve supervision of numerous employees, as well as contact with patrons and handling of funds. The pit boss occupies a central position of trust on the casino floor. The nature of the conduct of commercial bribery and misconduct by a corporate official, as well as the acts of conspiracy to commit theft seriously violate that position of trust. (Factors 1 and 2). Respondent has offered no

mitigating circumstances under which this conduct took place, and I **FIND** that it was part of a conspiracy to commit a theft upon a patron. The respondent appears to be in his late 30s (although I neglected to get his exact age at the hearing, I trust that this can be filled in by way of exception) and thus was of mature age at the time of the conduct in November of 1985. (Factors 4 and 5). The conduct was repeated on at least two occasions by Vincent Farina, and he cites no social conditions contributing to that conduct. (Factors 6 and 7). As to evidence of rehabilitation, he cites his otherwise long and unblemished work record in the casino industry. (Factor 8).

When all of the above factors, and especially noting the highly sensitive nature and duties of the pit boss's position, as well the grave nature of the conduct involving a theft committed against a patron, as well as conduct constituting commercial bribery and misconduct of a corporate official, I **CONCLUDE** that the respondent's licensure would be inimical within the meaning of N.J.S.A. 5:12-86c1 and further **CONCLUDE** that he has failed to show rehabilitation from the innumerated disqualifying offenses of N.J.S.A. 5:12-86c1.

Based on the above findings and conclusions and application of the factors of rehabilitation, I further **CONCLUDE** that the respondent Vincent Farina has failed to establish his good character, honesty and integrity by clear and convincing evidence as required for licensure as a casino key employee under N.J.S.A. 5:12-89. Although his career in the casino industry has been otherwise without blemish or problem his conduct constituting conspiracy, theft, commercial bribery, misconduct of a corporate official so violated his trust as a casino key employee that the evidence of his otherwise good work in the casino industry is not sufficient to establish his good character, honesty and integrity by clear and convincing evidence. Athough Eileen Cohen was not without fault in this scam in that she was seeking to unlawfully pay for something to which she was actually entitled, respondent Vincent Farina's conduct breached his trust as a pit boss and casino key employee licensee and warrants revocation of that license.

DISPOSITION

On the basis of the above findings of fact and conclusions of law it is **ORDERED** that the casino key employee license of Vincent Farina is revoked.

This recommended decision may be adopted, 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 16, 1990
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

7-18-90
DATE

Dolores Dost
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 20 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

ij

458

EXHIBITS

For Petitioner:

P-1 Testimony of Harold Harmon, dated 8/31/89

P-2 New Jersey State Police report, dated 2/21/86

P-3 New Jersey State Police report, dated 12/30/85

P-5 State Grand Jury Indictment of Vincent Farina, dated 8/31/89

P-6 Testimony of Eileen Cohen before State Grand Jury, dated 1/18/90

For Respondent:

R-1 New Jersey State Police report, dated 1/29/89

R-2 Statement of Linda Smith, dated May 30, 1986

R-3 Statement of Jay Dee Clayton, dated May 30, 1986

R-4 Testimony of Jeffrey F. Johnson, Mark R. Owens and James P. Harrington, dated 1/18/90

R-5 Testimony of Ronald Garvey, Ronald Ferraro, Pat Kelly and Paul Bascharon, dated 1/18/90

R-6 Statement of George Daviso, dated May 30, 1986

R-7 Statement of Anthony Spagno, dated May 30, 1986

WITNESSES

Vincent L. Farina

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-362
LICENSE NO. 070838-21
OAL DOCKET NO. CCC 00727-90
ORDER NO. 90-44-12

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

Complainant,

v.

HECTOR A. FELICIANO, JR.,

Respondent.

ORDER

A hearing 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 November 7, 1990,

IT IS on this 18th day of December 1990, ORDERED that the initial decision is modified as follows:

(1) Although the respondent admitted that he committed the offense of theft by unlawful taking, he was never convicted because the charges against him were dismissed after he completed the Pretrial Intervention Program. Therefore, the Administrative Law Judge should have found the respondent disqualified pursuant to N.J.S.A. 5:12-86(c)(2) and -86(g).

(2) The ALJ stated that, for the purpose of the inimical analysis, the burden of establishing rehabilitation is on the respondent. This

statement is incorrect. It is neither necessary nor appropriate to ascribe a burden of proof standard in these circumstances for the reasons more fully stated in State v. Theodore Williams, Docket No. 84-288 (Commission order May 1, 1987) and State v. Michael P. Waters, Docket No. 84-419 (Commission order June 12, 1987).

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 727-90
AGENCY DKT. NO. 89-362

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
HECTOR FELICIANO,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner, (Robert J. Del Tufo, Attorney General of New Jersey, attorney)
Hector Feliciano, respondent, pro se

Record Closed: August 20, 1990 Decided: September 18, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

Hector Feliciano, Jr., is licensed by the Casino Control Commission (Commission) as a slot attendant. He lost his job as a slot attendant at the Sands Casino. He was arrested on January 24, 1989 and charged with committing an act of theft against the Sands Casino. He admitted in writing that he and other casino licensees conspired to enter slot machines and manipulate them in order to make false jackpot payoffs to confederates. Feliciano was indicted for the crime of theft by unlawful taking in the fourth degree (more than $200 but less than $500),

contrary to N.J.S.A. 2C:20-3 and 2. Feliciano was admitted into the Pretrial Intervention Program (PTI) for first offenders R. 3:28.

As a result of this arrest, the Division of Gaming Enforcement (Division) filed a complaint with the Commission in May of 1988 seeking to revoke Feliciano's license on the grounds that his continued employment would be inimical to the policy of the Casino Control Act (Act) and to casino operations pursuant to N.J.S.A. 5:12-86c (2). It also alleged that he did not possess the good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b (2) and 90b. Feliciano requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 5:12-107.

An in-person prehearing conference was conducted on March 2, 1990 and the above issues were identified for resolution at a plenary hearing. In addition, the burden of proof on the various issues was allocated and the concept of rehabilitation, as described in N.J.S.A. 5:12-90h and Donna Davis 8 N.J.A.R. 301, was discussed with Feliciano.

Nevertheless, at the plenary hearing conducted on August 20, 1990, Feliciano, after admitting that he committed the conduct described above on more than one occasion, did not produce a single document attesting to his rehabilitation except the PTI dismissal order. He did apologize for his actions, but the thrust of his argument for continued licensure went to the issue of his unemployability and the fact that he was in debt. He explained that he could not produce character evidence because none of his friends were "loyal" to him. With presidential authority he declared that he "was not a thief." He said he made a simple mistake.

The burden of establishing rehabilitation is on the applicant or licensee. It is part of the inimicality analysis. Donna Davis, 8 N.J.A.R. 301, N.J.S.A. 5:12-90h. The burden of establishing good character, honesty and integrity is upon the applicant or licensee by clear and convincing evidence. N.J.S.A. 5:12-89b(2) and 90b. A mere half hearted apology is not enough to meet either standard; it is not enough by a wide margin.

I **CONCLUDE** that the continued licensure of the respondent would be inimical to the policy of the Act and to casino operations.

I further **CONCLUDE** that the respondent has failed to establish by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2) and 90b.

I **ORDER** that the casino employee license of Hector Feliciano, Jr., be **REVOKED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Sep 18, 1990
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

9/24/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 26 1990
DATE
dho

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

WITNESS LIST

For the Petitioner:

Hector Feliciano, Jr.

For the Respondent:

Hector Feliciano, Jr.

EXHIBIT LIST

For the Petitioner:

P-1 Renewal Application
P-2 Document
P-3 Statement dated 1-5-89
P-4 Summons
P-5 Indictment

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-342
LICENSE NO. 78641-21
REGISTRATION NO. 77686-40
OAL DOCKET NO. CCC 08412-89
ORDER NO. 90-37-11

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

Complainant, :

v. :

JAVIER FELICIANO, :

Respondent. :

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 September 19, 1990,

IT IS on this 26th day of September 1990, ORDERED that the initial decision is modified as follows:

> The Administrative Law Judge's (ALJ) inimical analysis was incorrect in two respects. First, the ALJ stated that the respondent's age had no bearing on this analysis because the respondent admitted that he knew what he was doing was wrong. Second, although the ALJ considered evidence of rehabilitation with respect to the question of the respondent's good character, honesty and integrity, he did not factor this evidence into his analysis of the disqualification issue. Pursuant to N.J.S.A. 5:12-90(h) and 91(d), the age of the respondent when the offense was committed and any evidence of rehabilitation must be considered before determining whether an offense is disqualifying under N.J.S.A. 5:12-86(c)(2).

See Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301, 314 (1985).

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that Javier Feliciano 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /cm
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC-08412-89

AGENCY DKT. NO. 89-342

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

Petitioner,

vs.

JAVIER FELICIANO,

Respondent.

R. LANE STEBBINS, Deputy Attorney General for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

JAVIER FELICIANO, pro se, respondent

Record Closed: JULY 6, 1990 Decided: AUGUST 1, 1990

BEFORE **JOSEPH E. KANE, ALJ:**

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) seeking revocation of respondent's casino employee license #78641-21 and casino hotel employee registration #77686-40. The Division alleges, among other things, that respondent committed acts which are inimical to the interest of the Casino Control Act and the gaming industry of the State of New Jersey and respondent lacks the requisite good character, honesty and integrity required for licensure.

PROCEDURAL HISTORY

The Division filed its complaint with the Commission on May 2, 1989. Respondent requested a hearing on May 11, 1989 and on October 27, 1989 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on February 20, 1989 by Lillard E. Law, ALJ followed by a hearing which was held on July 6, 1990. The record was closed on July 6, 1990.

ISSUES

A. Whether respondent's continued licensure and registration is inimical to the policy of the Casino

Control Act pursuant to N.J.S.A. 5:12-86c because he is alleged to have committed a violation of N.J.S.A. 2C:20-3 (theft)?

B. Whether respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2)?

C. Whether the extraordinary relief of waiver pursuant to N.J.S.A. 5:12-91(e) should be granted to respondent. Note, this issue was added at the commencement of the hearing by motion made by the Division of Gaming Enforcement.

UNCONTESTED FACTS

Based upon testimony and documents proferred at the hearing, the following facts are neither contested nor in dispute. Therefore, these uncontested facts are hereby adopted as **FINDINGS OF FACT** in this matter.

Respondent is a 20 year old single male with two dependents, his girlfriend and one child, who was issued a casino employee license and casino hotel employee registration.

In the summer of 1987 respondent applied for and received a casino hotel employee registration. Subsequently, in November of 1988 he received his casino employee license. Both the hotel registration and casino license have been suspended pending the outcome of the within proceeding.

Respondent began employment in the casino industry on or about February 1, 1989 as a change person in the Atlantis Hotel/Casino. He remained in this position until February 28,

1989, the date he was arrested and charged with theft, N.J.S.A. 2C:20-3. Thereafter, respondent was employed at Bally's Grand where he worked until his license was suspended by the Casino Control Commission on May 19, 1989. Respondent testified that it took him nine or ten months to find a job after his license was suspended. He is currently working part-time at the Pathmark Supermarket in Vineland, New Jersey. With this employment, he is currently supporting one child and sharing the cost of an apartment with his girlfriend.

On February 28, 1989 respondent was working as a change person in the Atlantis Hotel/Casino. A change person works on the floor of the casino meeting with the casino's patrons and supplying them with change and tokens. On February 28, 1989 respondent was approached by a casino patron, Mr. Rice, who gave respondent a $50.00 bill. In return, respondent provided Mr. Rice with $20.00 in tokens at which time Mr. Rice, apparently not noticing the mistake, turned and walked away. Respondent testified that he was aware that he had only paid Mr. Rice $20.00 in tokens and that he intended to take the other $30.00 home with him at the conclusion of his shift. Respondent testified that he knew it was wrong to retain the patron's money. Respondent reasoned "that I had one on him and that he would not argue". Mr. Rice did return and confront respondent requesting the return of his $30.00. An argument between Mr. Rice and respondent then began and lasted approximately five minutes. Respondent then attempted to secrete the three ten dollar bills in a towel rack of the men's room. Mr. Rice observed the

respondent's attempts to hide the money and upon calling Atlantis security, the money was retrieved from the towel rack by Coin Cage Supervisor, John Allen. Respondent was placed under arrest and charged with theft, N.J.S.A. 2C:20-3.

Respondent pled guilty in the Atlantic City Municipal Court to theft by deception, N.J.S.A. 2C:20-3 and was ordered to pay a penalty of $150.00, this penalty having been paid as of the date of the hearing. Thereafter, as a result of the February 28, 1989 incident and subsequent guilty plea, respondent's license was suspended by the Casino Control Commission.

In January of 1990 respondent was found guilty of driving while under the influence, N.J.S.A. 39:4-50. He was fined $365.00 and ordered to spend two days in an Intoxicated Driver Resource Center. Approximately one month after the DWI arrest, respondent was arrested in Cumberland County, New Jersey and charged with possession of a controlled dangerous substance (cocaine) N.J.S.A. 2C:35-10a(1), indictment number 90-03-0344-I/B. The charges for possession of CDS were pending as of the date of the hearing, however, respondent indicated that on July 9, 1990 he had an interview with the Cumberland County Probation Office at which time he was hopeful that he would be admitted into the Pre-Trial Intervention Program. Respondent admitted that he did possess cocaine as charged in the above indictment number 90-03-0344-I/B. Respondent expressed regret that both the DWI and possession incidents had occurred and explained that these arrests were as a result of the depression he was feeling

due to his inability to find work for approximately nine months after leaving the Atlantis Hotel/Casino.

In addition to contributing to the support of his girlfriend and one eleven month old child, respondent has been attending for one month, Star Technical Institute to receive a degree in electronics. This is a basic electronics course which, when completed, in January of 1991 will qualify respondent for the field for computer repair.

For the past two and one-half years respondent has been a member of, and a part-time counsellor in Centro Del Sagrado Corazon, a Catholic youth group in Vineland, New Jersey. A letter presented by the respondent, R-1, in support of his good character, honesty and integrity was signed by Rev. Victor Muro, Director and Jollyvette Ramos, the Vice President of Centro Del Sagrado Corazon. Respondent candidly admitted that the individuals who signed the letter, R-1, were upset that respondent had been charged with possession of CDS (cocaine). As a result of the possession charge, Rev. Muro has revoked respondent's role as a counsellor to other members of the group.

Respondent was afforded the opportunity to have the record held open an additional period of time in order to permit him to submit additional letters concerning his character. Respondent refused and the record was closed on July 6, 1990.

DISCUSSION AND CONCLUSIONS

The first issue presented is whether participation by the

respondent in the gaming industry would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or will 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. Davis vs. Division of Gaming Enforcement, 8 N.J.A.R. 301 at page 313. Thus, the first question which must be answered is whether the offense in and of itself is inimical to the policies of the Casino Control Act and/or the gaming industry. It is possible to have an offense fall within the inimical classification and still have an applicant retain his or her license because under the circumstances the individual's continuing licensure would not constitute a threat to the gaming industry or impairment of the public's confidence in the industry. The latter result could be reached by applying the rehabilitation factors found within Section 90(h) and/or 91(d) to determine whether continuing licensure is inimical.

Respondent in paragraph 5 of the March 1, 1990 prehearing order stipulated that he had on February 28, 1989 committed the offense of theft, N.J.S.A. 2C:20-3 and that he was found guilty in the Atlantic City Municipal Court and was ordered to pay a penalty of $150. Considering the location of the crime, it is clear that the offense does fall within the inimical category of 86c(2) of the Act. Since the rehabilitation factors of Sections 90(h) and 91(d) of the Act are subsumed in the inimical analysis it is necessary to examine those factors in order to determine

whether respondent's continuing licensure rises to the level of inimicality.

Since the offense committed, N.J.S.A. 2C:20-3 involves an amount less than $200 respondent is guilty of a disorderly persons offense and accordingly there is no per se disqualification of his license pursuant to N.J.S.A. 5:12-86c(1). Instead, it is necessary to examine into all of the circumstances surrounding the crime including respondent's actions subsequent to the event.

The rehabilitation factors to be considered in the inimical analysis are as follows:

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.

In the instant matter, a consideration of factor number 1 should also include factor number 3 because the circumstances surrounding the crime must be considered in light of respondent's job responsibilities. Respondent on February 28,

1989 was a change person in the Atlantis Hotel/Casino. His duties were to make change and provide tokens to patrons of the Atlantis. As such, respondent had continuous involvement with the patrons in a position which was certainly highly visible to the public. A casino patron, Mr. Rice, trusting that respondent would fulfill his reponsibilities honestly completed his transaction, turned and walked away from respondent without the $30.00 due him. Respondent intended to, as he put it, "shortchange" Mr. Rice. Respondent continued this scheme even after Mr. Rice confronted him and argued with him about the issue for approximately five minutes.

Considering the nature and duties of respondent's position (factor number 1) and further considering that respondent intended all along to defraud a casino patron leads to the conclusion that the crime committed (factor number 2) is of a most serious nature. The amount of the fraud, that of $30.00, pales in insignificance when considered against the circumstances of the crime, that of intentionally and continuously depriving a casino patron of his money. Under factor number 4, there is an insufficient time between the occurrence, February 28, 1989 to the date of the hearing, July 6, 1990 to demonstrate with any realistic certainty that the offense would not again occur. The age of the respondent, (factor number 5) has no bearing in the analysis since considering that respondent admitted that he knew what he was doing was wrong, the maturity level of the respondent is not a factor to be considered.

Mitigating in favor of the respondent is that under

factor number 6, the February 28, 1989 incident was apparently a one time occurrence.

Under factor number 7, there were no social conditions which contributed to the happening of the offense.

Thus, when considering the rehabilitation factors as they apply to the inimical analysis, it is clear that respondent's continuing licensure would be inimical to the Casino Control Act and the gaming industry. The intent and purpose of the Casino Control Act is to insure confidence and trust by the public in the gaming industry. To permit the respondent to be licensed some 16 months after intentionally defrauding a patron would most assuredly undermine the confidence by the public in the gaming industry and regulatory process.

I, **THEREFORE, CONCLUDE** that the State has met its burden to show by a preponderence of the evidence that pursuant to Section 86c(2) of the Act the offense committed by the respondent on February 28, 1989 as well as his continuing licensure would be inimical to the Casino Control Act.

The second issue presented is whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2).

Pursuant to Section 89b(2) of the Act, the respondent is required to establish his good character, honesty and integrity by clear and convincing evidence. In the matter of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis vs. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp.

Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra, In the matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that respondent possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J.Super. 118 (L.Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Respondent only produced one document, R-1, attesting to his credibility, honesty and integrity. By respondent's own admission, the author of R-1 was displeased with respondent as a result of the possession of CDS charge to the extent that he requested that he no longer counsel fellow youth group members as to the evils of drugs. Thus, this letter, R-1, must be given

little, if any, weight. In addition, balanced against this evidence is respondent's conviction for driving while under the influence, N.J.S.A. 39:4-50 and his admission that he did in fact possess cocaine on January 31, 1990. Mitigating in respondent's favor is his effort to better his life by attending school at Star Techinical Institute and his support of his girlfriend and child. However, when balanced against the theft and DWI convictions, including the pending charges for possession of CDS respondent falls far short of convincing this tribunal by clear and convincing evidence of his good character, honesty and integrity.

Accordingly, **I FIND** that respondent has failed to meet his burden placed upon him by the provisions of Section 89b(2) of the Act.

The third issue is whether the extraordinary relief of waiver pursuant to N.J.S.A. 5:12-91(e) should be granted to respondent.

Section 91(e) of the Act enables the Commission to grant a waiver of any otherwise disqualifying offense where the interest of justice so dictate. It must be emphasized that the nature of the relief afforded to the Commission by Section 91(e) of the Act is extraordinary and must only be granted for good cause shown.

In the instant matter, respondent has failed to demonstrate that he is an individual possessing good character, honesty and integrity. Although the latter standard (89b(2)) is inapplicable to a hotel registrant, the offense committed by the respondent is one of dishonesty and deceit which cannot be

tolerated under any circumstances on the floor of a casino when interacting with patrons. The amount of the fraud is insignificant. The perpetration of the fraud is great especially when one considers the degree to which this conduct will destroy public confidence in the gaming industry. Casinos must be free from those who would flim-flam the public. This type of conduct does not belong in a highly regulated industry such as the casino industry in Atlantic City.

Accordingly, I do not recommend that the Commission grant a waiver to the respondent pursuant to the provisions of Section 91(e) of the Act.

RECOMMENDED DECISION

For the reasons set forth above, I **FIND** that the respondent, Javier Feliciano, committed an act which is inimical to the policies of the Casino Control Act and the gaming industry in general pursuant to Section 86c(2) of the Act. Respondent has failed to demonstrate by clear and convincing evidence his good character, honesty and integrity pursuant to Section 89b(2) of the Act. The extraordinary relief of waiver provided under Section 91(e) of the Act should not issue in this instance.

Accordingly, I **HEREBY REVOKE** respondent, Javier Feliciano's, casino employee license #78641-21 and casino hotel employee registration #77686-40.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 6, 1990
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

8/10/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 14 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

FOR PETITIONER:

P-1 New Jersey State Police Investigation Report dated 2/28/89;

P-2 Complaint & Summons dated 2/28/89;

P-3 Indictment No. 90-03-0344-I/B filed 3/22/90;

FOR RESPONDENT:

R-1 Letter dated March 4, 1990 from Centro Del Sagrado Corazon

R-2 Enrollment Agreement of Star Technical Institute

R-3 Letter from Julie M. Fisher, Career Reprsentative, Star Technical Institute;

R-4 Loan Approval from New Jersey Department of Higher Education dated May 25, 1990;

WITNESSES

FOR PETITIONER:

Javier Feliciano

FOR RESPONDENT:

Javier Feliciano

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-469
LICENSE NO. 019582-21
REGISTRATION NO. 099933-40
OAL DOCKET NO. CCC 04978-90
ORDER NO. 90-42-2

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

Complainant,

v.

JOHN A. FOGARINO,

Respondent.

ORDER

A hearing 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 October 24, 1990,

IT IS on this 27th day of November 1990, ORDERED that the initial decision is modified as follows:

> To include a reference to N.J.S.A. 5:12-86(g) as a further basis for the disqualification, because the respondent was not convicted of the disqualifying offense.

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4978-90

AGENCY DKT. NO. 90-469

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

Petitioner,

v.

JOHN A. FOGARINO,

Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Richard L. Goldstein, Esq., for respondent

Record Closed: July 30, 1990 Decided: September 13, 1990

BEFORE **M. KATHLEEN DUNCAN**, ALJ:

This matter commenced with the filing of a complaint by the State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (hereinafter petitioner) seeking to revoke the casino employee license and casino hotel employee registration of John A. Fogarino (hereinafter respondent). The complaint alleged that respondent had been charged with possession of a controlled dangerous substance (cocaine) contrary to N.J.S.A. 2C:35-10. By order entered June 8, 1990, the Casino Control Commission suspended respondent's employee license and hotel employee registration pending the outcome of a plenary hearing. By letter dated June 7, 1990, respondent's attorney requested a hearing on his behalf, and on June 25, 1990, 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.

A prehearing conference was conducted by telephone conference call on July 11, 1990; at that time the following were identified as issues for determination at hearing:

1. Has Mr. Fogarino engaged in conduct which indicates that his continued licensure and hotel employee registration would be inimical to the policies of the Casino Control Act and casino operations in the State of New Jersey, N.J.S.A. 5:12-86(c)2? In connection with this question the Division of Gaming Enforcement proceeds pursuant to its authority under N.J.S.A. 5:12-86(d) or N.J.S.A. 5:12-86(g) to establish this conduct.

2. Does respondent have the requisite good character, honesty, and integrity for licensure as required by N.J.S.A. 5:12-89(b)2 and 90(b)?

3. If otherwise disqualified, should respondent be allowed to retain his hotel employee registration pursuant to the waiver provisions of N.J.S.A. 5:12-91(e)?

The hearing was scheduled for July 16, 1990, and took place as scheduled at the Trenton office of the Office of Administrative Law. Following the close of testimony it was determined that the record would remain open for the receipt of additional evidence from respondent. A letter dated July 13, 1990, addressed, "To Whom It May Concern" from Charlotte L. Blyn, M.D., respondent's psychiatrist, was received on July 20, 1990. No objection having been made by petitioner, the letter was marked R-2 in evidence on July 30, 1990, whereupon the record closed.

FINDINGS OF FACT

The facts relevant to a determination of this matter are not in dispute and I, therefore, **FIND** the following as uncontested facts.

Prior to the October 3, 1989 incident which resulted in the within matter, respondent was employed by Caesar's Cafe Roma as a waiter. On that date Detective John Silver of the New Jersey State Police, Division of Gaming Enforcement, arrested respondent at the restaurant and charged him with possession of a controlled dangerous substance - cocaine. Detective Silver removed the suspected controlled dangerous substance from respondent's person at that time and forwarded it for analysis to the State

Police Laboratory in Hammonton, New Jersey. Following his arrest, upon the advice of Detective Silver in October or November 1989, respondent applied for and received a casino hotel employee registration. Detective Silver had advised respondent that he would undoubtedly lose his casino license as a result of his conduct on October 3, 1989, but that he might be permitted to maintain his registration. Also following his arrest in October 1989, respondent left his employment at Caesar's and commenced employment at Sinbad's Seafood Restaurant in the Taj Mahal.

The criminal charges arising from the October 1989 arrest are still pending against respondent; he has been permitted to enter the pretrial intervention program which he has not yet completed. Respondent entered no plea to the charges prior to being permitted to enter the pretrial intervention program, although in the course of the within hearing he acknowledged that the substance which was removed from his person on October 3, 1989 by Detective Silver was, in fact, cocaine. Completion of the pretrial intervention program requires the payment of a $1000 fine, 25 hours of community service, periodic urine testing, maintaining gainful employment and meeting with a counselor periodically. The counselor did not testify at the hearing and no communication from him or her was offered in evidence. Respondent testified that he has not completed the PTI program. He expected to finish in October 1990. He has not yet paid the fine; he indicates he intends to borrow this money from his parents since he is not currently employed.

Concerning the details of his offense, respondent testified that he had the cocaine on his person on October 3, 1989, knowingly. He said that he did not purchase it on site, but that he had brought it from home. He testified that some of his co-workers at Caesar's had suggested using cocaine to him as a way of staying awake. He testified that he had the cocaine on the premises with him to use after work in case he was tired to keep him awake for the drive home. He indicated that prior to October 3, 1989, he had used the substance "quite a few times" before and had commenced this practice following an automobile accident in April 1989, wherein he had fallen asleep at the wheel and smashed into the rear end of another vehicle. He further testified that he did not use the substance with social friends or family members. Although his former wife is aware of the pending charges, respondent has concealed the truth from his 13 year old son. "If my son ever found out it would kill me; I told him I got laid off," respondent testified. Respondent is 44 years old, he currently resides with his parents in Philadelphia.

Respondent's 13-year old son lives with his former wife. Although respondent and his former wife have been divorced since 1980, they are currently attempting to reconcile; in this regard respondent has consulted psychiatrist Charlotte L. Blyn, M.D. Dr. Blyn's June 4, 1990 letter to Richard Goldstein, respondent's attorney, was marked as R-1 in evidence. It provides in pertinent part:

> Mr. John Fogarino first consulted me, together with his wife - Amelia, in May 1990 for problems related to their marital relationship. Upon reviewing their initial history, it became apparent that Mr. Fogarino was highly anxious, especially in certain situations. Because of his need for a good performance record and his fear of not doing so, his level of anxiety became heightened. This is especially so when he is concerned about his relationship with his wife.
>
> Both Mr. and Mrs. Fogarino are currently under treatment and expect to continue. They are both highly motivated and a good prognosis is expected. At this time they are being seen jointly in weekly psychotherapy. However, it may be necessary to also see them on an individual basis.

A second letter from Dr. Blyn addressed To Whom It May Concern, dated June 13, 1990, was marked R-2 in evidence. It provides:

> Mr. Fogarino is in psychotherapy with me for an Adult Attention Disorder. This is a condition which has been present since childhood; however, it has only recently been diagnosed. Because of this disorder, Mr. Fogarino might easily be led into activities without considering the consequences.
>
> In addition to psychotherapy, this is a disorder which requires medication also. He is currently taking the prescribed medication and has shown improvement in his condition.

Respondent indicated that working as a waiter involved contact with casino patrons and guests. In general, he testified that patrons usually paid their own bill at the cash register; however, occasionally respondent would take the payment to the cashier for patrons. Respondent testified that he had no work-related problems and that he had encountered no disciplinary problems within the nine and one-half years he served as a waiter at Caesar's and the Taj Mahal. He indicated that the pension plan in which he is enrolled through the union requires 10 years to vest; respondent needs an additional 500 hours to vest his pension. He testified that Mark Clemency, his supervisor at Sinbad's Seafood Restaurant, told him that he was welcome back at any time his registration was restored.

Respondent futher testified that he did not think he was addicted to cocaine and that he has not gone to Narcotic's Anonymous or sought counselling for drug addiction. He testified that he has been drug free since his arrest and that he left Caeaer's to go to the Taj Mahal on his own to remove himself from associates who use drugs. He testified that he is not aware of anyone employed at the Taj Mahal who is involved with drugs. To satisfy his community service requirement, respondent is coaching for the Delaware Valley Baseball Little League, an activity which he has been engaged in for a number of years.

After his arrest, respondent assisted Detective Silver by advising him about a sports betting operation which was being conducted in Caesar's. Respondent called this betting operation to the detective's attention after the detective advised him that his case would be looked upon more favorably if he cooperated with the authorities. Respondent acknowledged that he was aware of the sports betting operation prior to his arrest and had not brought it to the attention of the authorities. Detective Silver testified that respondent has been very helpful to him in conducting his investigations.

With respect to the within proceedings, respondent said that he felt that he had suffered enough through his parents' finding out about his arrest and the substantial loss of income and financial benefits. He testified that he knows his conduct was a mistake but "to take everything away is a little harsh."

APPLICABLE LAW AND DISCUSSION

N.J.S.A. 5:12-86 provides that a casino employee is disqualified from licensure on the basis of:

> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice,"...(offenses listed)
>
> (2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations;...

N.J.S.A. 5:12-91 provides that the Casino Control Commission may revoke, suspend, limit or otherwise restrict the registration of a casino hotel employee upon the finding that the registrant is disquailified on the basis of the criteria recited in N.J.S.A. 5:12-86.

N.J.S.A. 2C:35-10 (possession of a controlled dangerous substance) is not one of the offenses listed in subsection (1) of N.J.S.A. 5:12-86c; accordingly, subsection (2) is the portion of statute relevant to a determination of the within matter. The analytical approach to be taken under subsection (2) in determining whether a particular offense requires the conclusion that licensure of the applicant would be inimical to the policies of the act was described in some detail by the Casino Control Commission in Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1986). Quoting from their previous decision, In the matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket Number 79-CL-1 (Commission Decision February 26, 1979), the Commission said:

> 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.

In Davis the Commission explained that the concept of rehabilitation under N.J.S.A. 5:12-90(h) and N.J.S.A. 5:12-91(d) specifically applies only to a conviction of any of the offenses enumerated in the Act as disqualification critera. The Commission noted, however, that many of the factors that are considered upon a claim of rehabilitation are included in the inimical analysis and generally observed that the notion of rehabilitation is subsumed in the inimical analysis. Davis, supra, at 314. Accordingly, to determine whether respondent's offense on October 3, 1989, possession of a controlled dangerous

substance (cocaine) on the casino premises, warrants the conclusion that his continued licensure and registration are inimical to the policies of the Act the facts of the present matter need to be assessed in the context of the rehabilitation critera. The enumerated factors in section 91(d) which apply to casino hotel employees' registrations are:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

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

Respondent's job as a waiter involves direct casino patron contact and interaction. He occasionally handles patrons' money when he takes their food checks and payment to the cashier for them. Respondent's offense was a serious one; this country is in the midst of a war against drugs. Drug abuse is a major problem which threatens the very fabric of our society. Respondent's offense was among the worst in this regard since by his own admission he was not an addict, unable to help himself, but rather a licensed employee who knowingly, willfully, and purposely chose to engage in unlawful conduct "quite a few times." Additional aggravating factors include the fact that he possessed the controlled dangerous substance on the casino premises and that he used the substance "to stay awake" while he was operating an automobile. Operating an automobile under the influence of drugs is an offense which threatens the safety and well-being not only of respondent but also of law abiding citizens using our highways. Furthermore, although respondent states that he realizes that his conduct was a "mistake" I am not persuaded that respondent recognizes the serious nature of his conduct. Although he

testified that he told his psychiatrist, Dr. Blyn, about his use of cocaine, R-1 and R-2 in evidence reflect that respondent consulted Dr. Blyn for marital counselling rather than for assistance with his drug problem. Respondent is 44 years old; accordingly, innocence and youth cannot be considered as mitigating circumstances or contributing factors to engaging in unlawful conduct. Furthermore, this offense occurred only last October; respondent is still enrolled in the PTI program. He has yet to satisfy his $1050 fine. By his own testimony he has not complied with the employment requirement of his pretrial intervention program and his community service efforts are nothing more than coaching Little League Baseball, something which he had been doing prior to his offense anyway. At best, it would be premature to conclude that respondent has atoned and reformed. For all of the foregoing reasons, I **CONCLUDE** that respondent has engaged in conduct which indicates that his continued licensure and registration are inimical to the policies expressed in the Casino Control Act which requires, so far as practicable, the exculsion from participation of persons with known criminal records, habits or associations. N.J.S.A. 5:12-1(b)(7).

Whether respondent has demonstrated by clear and convincing evidence that he possesses the necessary good character, honesty and integrity for licensure as required by N.J.S.A. 5:12-89(b)(2) and 90(b) is a question which cannot be answered in the affirmative given the foregoing inimical analysis. Given the foregoing conclusions, it is also not necessary to decide whether the provisions of N.J.S.A. 5:12-86(d)* are applicable to offenses under N.J.S.A. 5:12-86c(2), although it appears that the language "enumerated" probably applies only to the offenses specifically listed under subsection c(1). The only issue remaining for determination, therefore, is whether respondent should be permitted to retain his hotel employee registration pursuant to the waiver provisions of N.J.S.A. 5:12-91(e). That statute provides:

> The commission may waive any disqualification criterion for a casino hotel employee consistent with the public policy of this act and upon a finding that the interests of justice so require.

*Which identifies as a disqualifying criterion: "Current prosecution or pending charges in any jurisdiction of the applicant or of any person who is required to be qualified under this act as a condition of a casino license, for any of the offenses enumerated in subsection c. of this section; provided, however, that at the request of the applicant or the person charged, the commission shall defer decision upon such application during the pendency of such charge;"

Respondent's argument in this regard relates primarily to the effect revocation of his registration will have on his pension benefits. Respondent asserts that he needs to work an additional 500 hours to achieve the required ten years of service for his pension to vest. Although he acknowledged that employment opportunities exist at non-casino hotels, he asserted that Atlantic City has a different pension plan from the pension plan provided through the union to non-casino hotel employees. He also stated that if he does not go back to work within a certain amount of time he will lose the nine and one-half years credit he currently has in the pension system. Respondent did not indicate how long he has to return to work in a covered position and perhaps there are other options which respondent did not explore or explain on the record, such as transferring his nine and one-half years credit to another system. In any event, although the potential loss of pension benefits is regrettable, standing alone it does not provide a reason for waiving respondent's disqualification at this time. In Div. of Gaming v. Crumble, 12 N.J.A.R. 191, 205-206, the Casino Control Commission explained:

> As a standard for a 91(e) waiver, "interests of justice" necessarily includes consideration of the hardship that revocation would visit upon the respondent. Hardship is not alone determinative, for virtually every revocation can reasonably be expected to result in difficult consequences. Nevertheless, the degree of hardship, viewed always in the light of the policies of the Act and the purposes those policies are intended to further, is a relevant concern that requires our attention.

In that case, although the Commission noted its reluctance to exercise its waiver authority in drug related cases, the Commission concluded that because of Mr. Crumble's extraordinary efforts to reform, his was "an exceptional case." Mr. Crumble had presented persuasive evidence that he had gone "that extra mile" and had "pushed hard to get his life together" and had done all the things that show a very pro-social, law-abiding lifestyle, and not just for the sake of the Intensive Supervision Program in which he was required to participate as a condition for release from prison. No such extraordinary evidence was offered in the within matter and accordingly, I **CONCLUDE** that the circumstances of this case do not warrant exercising the extraordinary remedy of waiver.

Based upon the foregoing, it is hereby **ORDERED** that respondent's casino employee license and casino hotel employee registration are hereby **REVOKED.** It is further **ORDERED** that respondent 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.

This recommended decision may be adopted, 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 13, 1990
DATE

M. Kathleen Duncan
M. KATHLEEN DUNCAN, ALJ

Receipt Acknowledged:

9/13/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

SEP 17 1990
DATE

Mailed to Parties: Joyce LaVecchia
OFFICE OF ADMINISTRATIVE LAW

am

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EXHIBITS IN EVIDENCE

J-1 Order Suspending Casino Employee License and Casino Hotel Employee Registration, dated June 8, 1990

P-2 Certified Laboratory Report, Results of Drug Analysis, dated November 20, 1989

P-3 Accusation Number 90-40-00975-A, Superior Court of New Jersey, Law Division - Criminal

R-1 Letter from Charlotte L. Blyn, M.D., to Richard Goldstein, dated June 4, 1990

R-2 Letter from Charlotte L. Blyn, M.D., To Whom It May Concern, dated July 13, 1990

EXHIBITS FOR IDENTIFICATION ONLY

P-1 Request for Examination of Evidence Form, Laboratory #100,792-H

WITNESSES

For petitioner: John Silver

For respondent: John A. Fogarino
John Silver

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-85
LICENSE NO. 002641-22
OAL DOCKET NO. CCC 03438-89
ORDER NO. 90-43-4

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

Complainant,

ORDER

v.

ROBERT A. GARCIA,

Respondent.

A hearing 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 October 31, 1990,

IT IS on this 7TH day of November 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the casino employee license of Robert A. Garcia shall not be revoked substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3438-89
AGENCY DKT. NO. 86-85

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
ROBERT A. GARCIA,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Richard L. Press, Esq., for respondent (Press & Long, attorneys)

Record Closed: December 8, 1989 Decided: September 19, 1990

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 March 10, 1986, seeking revocation of the respondent's casino employee license, based upon the respondent's arrest on August 23, 1985, for possession of a controlled dangerous substance (marijuana under 25 grams), contrary to N.J.S.A. 24:21-20a(4), and comparable to N.J.S.A. 2C:35-10a(4). This charge against the respondent was dismissed in the Atlantic City Municipal Court on February 6, 1989.

These are the issues:

1. Has the respondent committed acts which constitute the offense of possession of a controlled dangerous substance (marijuana under 25 grams), contrary to N.J.S.A. 24:21-20a(4), and comparable to N.J.S.A. 2C:35-10a(4), and if so, would his continued licensure as a casino employee be inimical to the policy of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and to casino operations, pursuant to section 86c(2) of the Act, even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the Act.

2. Has the respondent established by clear and convincing evidence that he possesses the good character, honesty and integrity required for casino employee licensure, pursuant to sections 89b(2) and 90b of the Act.

PROCEDURAL HISTORY

The respondent requested a hearing concerning the Division's complaint, but proceedings were deferred pursuant to section 86d of the Casino Control Act during the pendency of charges in the Atlantic City Municipal Court. Upon dismissal of the charges on February 6, 1989, the respondent moved before the Casino Control Commission for an order dismissing the Division's complaint.

On May 4, 1989, the Commission denied the respondent's motion to dismiss the complaint and the Commission then transmitted this matter to the Office of Administrative Law on May 9, 1989, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was conducted on August 18, 1989, and the hearing was then held as scheduled in Atlantic City, New Jersey, on December 8, 1989. The record closed on that date. Issuance of this initial decision was delayed because of my heavy caseload, exacerbated by illness requiring my absence from the office for an extended period.

FINDINGS OF FACT

The material facts in this matter are essentially undisputed. The respondent is 37 years old. He and his family reside in Northfield, New Jersey. The respondent holds casino employee license number 02641-22.

On August 23, 1985, the respondent was working as an electrical shop foreman at Resorts Hotel and Casino. He had been employed there since 1975, which predated casino operations. New Jersey State Police Detective Sergeant Richard Loufik testified that an investigation concerning narcotics led to execution of a search warrant at Resorts' basement electrical shop on August 23, 1985.

According to Detective Sergeant Loufik, the respondent was not the initial focus of the investigation. However, he entered the electrical shop during execution of the warrant and he was told that the warrant covered all who were present. When the respondent was searched, a manila envelope containing marijuana was found in his back pocket, and a rolled marijuana cigarette was found in his wallet. The respondent admitted ownership of the marijuana and told the detective that it was obtained at his brother-in-law's party. The total weight of the marijuana was 4.77 grams.

The respondent was placed under arrest and advised of his Miranda rights. Detective Sergeant Loufik signed a municipal court complaint charging the respondent with possession of a controlled dangerous substance (marijuana under 25 grams), contrary to N.J.S.A. 24:21-20a(4). The Complaint was admitted into evidence at Exhibit P-1. The detective sergeant testified that the respondent had not been involved in the purpose for which the warrant had been obtained. His involvement had been simply that he walked into the room while the search was in progress. According to the detective sergeant, he received at least one trial notice concerning the municipal court proceeding, but the proceeding was postponed. It is undisputed that the matter was never prosecuted and it was dismissed by Municipal Court Judge Bruce F. Weekes pursuant to rule 7:4-2(h), on February 6, 1989.

Testifying on his own behalf, the respondent candidly acknowledged that he had concealed the marijuana on his person. He stated that he never took the marijuana

out of his pocket or wallet while he was at work. Although he acknowledged that he did smoke marijuana elsewhere at that time in his life, he credibly denied that he ever smoked marijuana at Resorts. The respondent explained that as an electrician who regularly worked with high voltage electricity, it would not be possible for him to perform his job safely if he were under the influence of drugs.

The respondent testified that he had purchased the marijuana from someone who was also at a party for his brother-in-law. The only reason that he had brought the marijuana with him to work was so that he could give it away to a fellow employee. The respondent had even put that employee's name on the envelope. The respondent testified sincerely that it was foolish to have brought the envelope to work and he realizes that he made a big mistake which will never be repeated. He has not had marijuana or any other drug in his possession since his arrest because he realizes that there is more to life than being high. The respondent stated that he totally rejects drugs, and he would not use any alcohol if it would affect his performance.

While employed at Resorts, the respondent satisfactorily completed vocational classes in advanced heating and air conditioning and black seal fireman (Exhibits R-2 and R-3). The respondent was nominated for employee of the month at Resorts in 1981 and 1984 (Exhibits R-4 and R-5), and he received the employee of the month award for May 1984 (Exhibit R-6). Nothwithstanding his excellent work record at Resorts, the respondent was asked to resign following his arrest on August 23, 1985.

After leaving his employment at Resorts, the respondent worked at the Tropicana Casino Hotel for about six months. However, he was laid off from that job. The respondent testified that he then went to work as a construction electrician for Femcor, a Federal Aviation Administration subcontractor. Letters of appreciation from the FAA commending the respondent's outstanding performance were admitted into evidence as Exhibits R-7 and R-8. According to the respondent, he is in the process of trying to pass the New Jersey exam which would permit him to become an electrical contractor. He also noted that he has had no arrests since August 1985. His only other arrest occured about 15 years ago when he received a conditional discharge for smoking a marijuana cigarette.

The respondent testified sincerely that his possession of marijuana in August 1985 had been totally wrong and he accepts full responsibility for it. It is a mistake he will always have to live with. It is his desire to return to the casino industry, because he enjoyed his work there. The respondent also noted that he performs some electrical work for his neighbors. He does not charge for this service and the neighbors pay only for the materials. He is willing to give his time for this purpose.

Several witnesses testified on the respondent's behalf. Joseph F. Taggart is an electrician for the TropWorld Casino Hotel. He has known the respondent for about 15 years. He characterized the respondent as an excellent electrician. According to Mr. Taggart, he has never heard anything negative about the respondent's honesty and integrity, either at work or in the community.

Helen Cohen is a neighbor of the respondent. He has performed some electrical work for her, without charge. In her opinion, the respondent is a nice and honest person. Michael Kopp testified that he has known the respondent for 15 years. They regularly socialize and he has never seen the respondent use drugs. Mr. Kopp considers the respondent to be a generous and honest man and he treasures the respondent's friendship.

The respondent's wife, Theresa Garcia, also testified. Noting that her husband is a good provider and has been steadily employed, Mrs. Garcia described the respondent as more mature than he was at the time of his arrest in 1985. She testified credibly that the respondent has not used any drugs since that time.

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 licensee or registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. Section 129(1) of the Act authorizes the revocation of

any license of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his credential.

Section 90e of the Act provides that a casino employee license shall be denied to any applicant who is disqualified on the basis of the criteria contained in section 86 of the Act. Pursuant to sections 86c(2) and 86g of the Act, the Commission may revoke the credential of any licensee who has committed any offense which indicates that continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, even if such conduct was not prosecuted in the criminal courts of this state. In this matter, it is undisputed that the respondent was arrested on August 23, 1985, and charged with the disorderly persons offense of possession of a controlled dangerous substance (marijuana under 25 grams), contrary to N.J.S.A. 24:21-20a(4), and comparable to N.J.S.A. 2C:35-10a(4). The respondent has in fact admitted that on that date he had in his possession 4.77 grams of marijuana.

Does the respondent's commission of the offense of possession of a controlled dangerous substance (marijuana under 25 grams) render his continued casino employee licensure inimical to the policy of the Casino Control Act and casino operations, pursuant to section 86c(2) of the Act? The Commission has held that the rehabilitation factors set forth in section 90h of the Act must be considered in any case involving a licensee under the Act where section 86c(2) disqualification is at issue. Stated in another way, the rehabilitation factors are an integral part of the inimicality analysis. In the Matter of the Application of Horizon Air, Inc., For a Casino Industry License, dkt. no. 87-CSI-10 (Comm. decision September 1, 1988).

Section 90h sets forth eight factors which should be considered in determining whether rehabilitation has been affirmatively demonstrated. These include the nature and duties of the position involved; the nature and seriousness of the conduct; the circumstances under which it occurred; the date of the conduct and the actor's age when it was committed; whether the offense was isolated or repeated; social conditions contributing to the conduct; and any evidence of rehabilitation following the conduct.

The respondent is now 37 years old. His offense occurred five years ago, when he was 32. Although the respondent candidly acknowledged the use of marijuana recreationally away from the work place, he credibly denied ever using marijuana at work. The reason for his arrest at Resorts Casino Hotel was his possession of a very small amount of marijuana concealed on his person. Although his possession of a controlled dangerous substance in a licensed casino cannot be condoned, it is apparent that there was no relationship between the possession and the respondent's duties as an electrician under his non-gaming casino employee license.

Given the respondent's age at the time of the offense, it cannot be said that youth played a facter in his conduct. However, his use of marijuana away from the licensed casino premises at that time indicates a lack of mature judgment. The respondent has since had an opportunity to reflect carefully on his misconduct and has totally rejected the use of drugs. He has steadily held employment in a responsible position as a construction electrician. The fine quality of his performance has resulted in commendations from the Federal Aviation Administration. In addition, the respondent has prepared to take an examination which would afford him State licensure as an electrical contractor. Finally, it is apparent from the testimony of witnesses on the respondent's behalf that he is held in high regard and as a person of honesty and integrity by those who know him.

In light of all of the circumstances examined above, I **CONCLUDE** that the respondent's continued participation as a casino licensee would not justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I further **CONCLUDE** that the respondent has not committed an offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(2) of the Casino Control Act.

Pursuant to section 80a of the Casino Control Act, it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications for licensure. Among these qualifications is the requirement that an applicant for a casino employee license demonstrate that he possesses the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2)

and 90b of the Act. Those who know the respondent have expressed their trust in him. Based upon all of the foregoing evidence, I **CONCLUDE** that the respondent has sustained his burden of establishing by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Casino Control Act. Therefore, I further **CONCLUDE** that the Division's complaint seeking revocation of the respondent's casino employee license should be dismissed.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Robert A. Garcia be **DISMISSED.**

This recommended decision may be adopted, 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 19, 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

Sept 20, 1990
DATE

Dolores Host
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For the petitioner:

P-1	Municipal court complaint and summons

For the respondent:

R-1	License renewal fee check, dated November 20, 1986
R-2	Vocational training certificate
R-3	Vocational training certificate
R-4	Employee of the month nomination
R-5	Employee of the month nomination
R-6	Employee of the month award
R-7	Letter of appreciation
R-8	Letter of appreciation
R-9	Vocational certificate
R-10	Vocational certificate
R-11	Psychological evaluation
R-12	Order of dismissal

Witnesses

For the petitioner:

Richard Loufik
Robert A. Garcia

For the respondent:

Jospeh Taggart
Helen Cohen
Michael Kopp
Theresa Garcia
Robert A. Garcia

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-14
LICENSE NO. 71257-21
OAL DOCKET NO. CCC 08411-89
ORDER NO. 90-29-3

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

Complainant,

v.

TINAENETTA M. GOINES,

Respondent.

ORDER

A hearing 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 July 18, 1990,

IT IS on this 9th day of August 1990, ORDERED that the initial decision is modified as follows:

> We concur with and adopt the Administrative Law Judge's factual findings and his conclusion that the respondent's continued licensure would be inimical to the policies of the Act. However, we reject the Administrative Law Judge's erroneous reference to respondent's offense as a listed statutory disqualifier. (See Initial decision at p. 13). The offense committed by the respondent, theft by unlawful taking (fourth degree), is disqualifying pursuant to N.J.S.A. 5:12-86(c)(2) and -86(g). Because the offense is fourth degree, it is not a statutory disqualifier under N.J.S.A. 5:12-86(c)(1).

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8411-89
AGENCY DKT. NO. 89-14

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
TINAENETTA M. GOINES,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for the petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Tinaenetta M. Goines, the respondent, pro se

Record Closed: May 10, 1990 Decided: May 24, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Tinaenetta M. Goines's casino employee license no. 71257-21, pursuant to *N.J.S.A.* 5:12-90 and *N.J.S.A.* 5:12-129(1). The Division sought revocation of the respondent's license by reason of its contention that the respondent had committed a criminal offense which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(2), by means of section 86g, and therefore,

she lacks the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

The respondent had obtained a casino employee license from the Commission so she could be employed as a pit clerk at the Sands Hotel and Casino. By complaint to the Commission, filed July 13, 1988, the Division objected to the respondent's continued licensure, asserting that the respondent had committed the offense of theft by unlawful taking (fourth degree), in violation of *N.J.S.A.* 2C:20-3, which is a disqualifying offense under section 86c(2), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89b(2). Based upon the complaint, the Commission notified the respondent on July 15, 1988, that she had the right to a hearing, and that failure to respond within 15 days could result in her license being revoked. By application dated July 25, 1988, which was received by the Commission on July 28, 1988, the respondent requested a hearing. By letter dated February 28, 1989, which was received by the Commission on March 6, 1989, the respondent requested a deferral of Commission action in this case, pursuant to section 86d, until resolution of the criminal charges. This request for a deferral was granted by the Commission. On October 20, 1989, the respondent notified the Commission that the charges had been dismissed following her successful completion of a Pre-Trial Intervention Program and she requested that her hearing request be activated. On October 25, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on November 1, 1989, 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 in the matter was held before me on December 5, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to *N.J.S.A.* 5:12-86c because she is alleged to have committed a violation of *N.J.S.A.* 2C:20-3, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by *N.J.S.A.* 5:12-86g.

B. Whether respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to *N.J.S.A.* 5:12-89b(2), as incorporated within section 90b.

A hearing was held on May 10, 1990, in the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record closed.

FACTUAL DISCUSSION

On April 24, 1988, the respondent, Tinaenetta M. Goines, was employed as a slot booth cashier at the Trump Plaza Hotel and Casino. At one point during her shift, she entered the slot booth of a new slot booth cashier, B. Materio, in order to allow Ms. Materio to go on a break. While in the slot booth, the respondent removed $200 in coupons from Ms. Materio's cash drawer. Thereafter, the respondent placed the $200 in coupons in her cash drawer, and she removed two one-hundred-dollar bills from her cash drawer. She placed the $200 in her pocket. [P-1 & P-3]

At the end of the shift, it was discovered that Ms. Materio's cash drawer was $200 short. The slot cashier manager, Linda Thibault, along with Trump Security Investigator, Carol Waldron, questioned the respondent about the shortage, and the respondent admitted taking the $200 in coupons from Ms. Materio's cash drawer, placing them in her drawer, and removing $200 in cash. Ms. Thibault then escorted the respondent to the State Police investigators in the Division office at the Trump Plaza. While walking up stairwell six to the Division's office, the respondent removed the two one-hundred-dollar bills from her pocket and dropped them in the stairwell.

Upon being questioned by the State Police, the respondent admitted the theft and provided a written statement which is P-1 in evidence. She also stated that she dropped the money in stairwell six. She told the police that the reason she took the coupons from Ms. Materio's cash drawer is that Ms. Materio was a new employee who had only worked there for one week, and the shortage would look like an honest mistake by a new employee. [P-3] The respondent stated at the hearing that the reason she took the coupons was that she needed some money. There were no pressing social conditions; she just wanted to have some money.

A complaint was issued in the Atlantic City Municipal Court on April 24, 1988, charging the respondent with theft by unlawful taking in violation of *N.J.S.A.* 2C:20-3 (P-5). Thereafter, the matter was presented to the Atlantic County Grand Jury which returned an indictment against the respondent charging her in Indictment No. 88-06-1505-ACP with one count of theft by unlawful taking. On July 22, 1988,

Superior Court Judge Robert Neustadter approved the respondent's entry into the Pre-Trial Intervention Program and placed her on probation for six months until March 1, 1989. She was also ordered to serve 50 hours of community service and to pay $200 in restitution. [P-4] The respondent successfully completed her probationary period and the charges were dismissed.

The respondent is 21 years old. She was raised in Atlantic City by her mother and father along with her two brothers and a sister. She was a cheerleader and was on the softball team at Pleasantville High School. She graduated from high school in 1987.

She obtained her casino employee license in June 1987, and became employed at the Sands Hotel and Casino as a pit clerk. She resigned her position because of disagreements with her supervisor. She then became employed as a change person and slot booth cashier at the Trump Plaza. She was fired on April 24, 1988 as a result of the charges in this case. During the summer of 1988, she worked at Resorts International Hotel and Casino as a timekeeper; however, she was terminated from this position when her casino employee license was suspended by the Commission. In February 1989, she became employed by Northeastern Water Resources doing telemarketing. She resigned this position in October 1989, and she is presently unemployed.

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the respondent and the holder of a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully in substantial respect. She admitted her misconduct and described the underlying circumstances. She denied, however, telling the State Police that she removed the coupons from Ms. Materio's cash drawer because Ms. Materio was a new employee and that she thought the shortage would be considered a mistake by a new employee. Accordingly, I am persuaded to accept the respondent's testimony in substantial part.

FINDINGS OF FACT

1. On April 24, 1988, the respondent, Tinaenetta M. Goines, was employed as a slot booth cashier at the Trump Plaza Hotel and Casino.

2. At one point during her shift, respondent entered the slot booth of a new slot booth cashier, B. Materio, in order to allow Ms. Materio to go on a break. While in the slot booth, the respondent removed $200 in coupons from Ms. Materio's cash drawer. Thereafter, the respondent placed the $200 in coupons in her cash drawer, and she removed two one-hundred-dollar bills from her cash drawer. She placed the $200 in her pocket.

3. While being escorted by Trump management personnel up stairwell six to the Division's office, the respondent removed the two one-hundred-dollar bills from her pocket and dropped them in the stairwell.

4. Upon being questioned by the State Police, the respondent admitted the theft and provided a written statement. She told the police that the reason she took the coupons from Ms. Materio's cash drawer is that Ms. Materio was a new employee who had only worked there for one week, and the shortage would look like an honest mistake by a new employee. The respondent stated at the hearing that the reason she took the coupons was that she needed some money.

5. A complaint was issued in the Atlantic City Municipal Court on April 24, 1988, charging the respondent with theft by unlawful taking in violation of *N.J.S.A.* 2C:20-3 (P-5). Thereafter, the matter was presented to the Atlantic County Grand Jury which returned an indictment against the respondent charging her in Indictment No. 88-06-1505-ACP with one count of theft by unlawful taking.

6. On July 22, 1988, Superior Court Judge Robert Neustadter approved the respondent's entry into the Pre-Trial Intervention Program and placed her on probation for six months until March 1, 1989. She was also ordered to serve 50 hours of community service and to pay $200 in restitution.

7. The respondent successfully completed her probationary period and the charges were dismissed.

8. The respondent is 21 years old. She was raised in Atlantic City by her mother and father along with her two brothers and a sister. She was a cheerleader and was on the softball team at Pleasantville High School. She graduated from high school in 1987.

9. Respondent obtained her casino employee license in June 1987, and became employed at the Sands Hotel and Casino as a pit clerk. She resigned her position because of disagreements with her supervisor.

10. Respondent then became employed as a change person and slot booth cashier at the Trump Plaza. She was fired on April 24, 1988 as a result of the charges in this case.

11. During the summer of 1988, respondent worked at Resorts International Hotel and Casino as a timekeeper; however, she was terminated from this position when her casino employee license was suspended by the Commission.

12. In February 1989, respondent became employed by Northeastern Water Resources doing telemarketing. She resigned this position in October 1989, and she is presently unemployed.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> ....
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> ....

(2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing;

. . . .

g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government , of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or

employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

e. 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.

. . . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." *N.J.S.A.* 5:12-129(1) provides for the revocation of 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, by means of section 86g, that the respondent committed a violation of *N.J.S.A.* 2C:20-3, theft by unlawful taking, which constitutes a violation of *N.J.S.A.* 5:12-86c, and that, accordingly, she is disqualified from continued licensure.

(A) *N.J.S.A.* 5:12-86c(2) and *N.J.S.A.* 5:12-86g

Section 86g provides that a licensee or registrant will be disqualified from licensure and registration because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(2) 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 criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the polices 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 and of casino operations," 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 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 efficancy and integrity of the regulatory process."

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 316-317 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent was charged with a fourth degree theft offense which is not listed as a disqualifier under section 86c. The charges were subsequently dismissed because the respondent successfully completed the Pre-Trial Intervention Program. As this offense is not listed as a disqualifier under section 86c(1), the Division asserts that this alleged offense is a disqualifying offense under section 86c(2) and section 86g, despite the fact that such act was not prosecuted in the criminal courts of this state.

N.J.S.A. 2C:20-3, Theft by unlawful taking or disposition, provides in pertinent part:

> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

In this case, the respondent while in the course of her employment, wrongfully removed $200 in coupons from another employee's cash drawer, placed the coupons in her own cash drawer, and wrongfully removed $200 in cash from her own cash drawer which was the property of the Trump Plaza Hotel and Casino. She indicated that she simply wanted some money.

CONCLUSION

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of *N.J.S.A.* 2C:20-3. I further **CONCLUDE** that, pursuant to *N.J.S.A.* 2C:20-2b(3), the offense constitutes a crime of the fourth degree.

Recently, in State of New Jersey, Dept. of Law and Public Safety, Division of Gaming Enforcement v. Michael P. Waters, OAL DKT. CCC 3933-86, decided by the Commission (June 12, 1987), the Commission stated at 2-3 that:

> A distinction must be drawn between the rehabilitation from a section 86(c)(1) or (3) disqualifying offense pursuant to sections 90(h) or 91(d) of the Act and rehabilitation as an aspect of the inimical analysis. In the former situation, disqualification is established once it is shown that the respondent committed an enumerated offense. The respondent is then afforded the opportunity to affirmatively demonstrate his rehabilitation from that disqualification. It is well established that, consistent with other affirmative licensing criteria, the respondent must prove his rehabilitation by clear and convincing evidence. Application of Richard Romanishin for a Casino Employee License, Docket No. 84-

> EA-85 (Commission order, May 23, 1985); Application of Chester R. Brathwaite for a Casino Employee License, Docket No. A-4252-82T3 *Unpublished opinion reversing Commission decision, January 23, 1984).
>
> However, unlike a section 86(c)(1) or (3) situation, disqualification pursuant to section 86(c)(4) is not established upon demonstrating that the respondent committed the offense in question. Such a determination can only be made after considering all the circumstances surrounding the offense: its nature, its remoteness, and the offender's conduct subsequent to the offense, i.e., essentially the same factors which bear upon rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Commission decision December 27, 1985); State v. Theodore Williams, Docket No. 84-288 (Commission order May 1, 1987).

The Commission concluded that if the Division establishes a case for the respondent's disqualification, it is "then incumbent upon the respondent to show that she was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof), had shifted."

> In the Davis case, the Commission stated at 313-314:
>
> 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 rehabilitation 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.

The Commission indicated that "it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis (and) . . . the inimical analysis is substantially similar to the concept of rehabilitation." The Commission concluded that:

> 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). [Id. at 314] [footnote omitted]

The eight specific criteria enumerated in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d to be evaluated when a determination of rehabilitation is to be made are:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

In regard to the first criterion, Tinaenetta M. Goines is a casino licensee and was employed as a change person and slot booth cashier. As such, she does have direct responsibilities for actual gaming activities and does come in contact with casino patrons. She is also directly responsible for maintaining money belonging to the casino.

Second, the respondent committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, on one occasion while employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent was employed as a slot booth cashier. This is a position of trust and responsibility. The respondent used her position in order to remove $200 in coupons from another employees cash drawer while the respondent was relieving the new employee. This was a conscious theft as the respondent hoped the shortage would simply be considered a mistake by a new employee. The respondent thus knowingly

violated her position of trust and used her employment in order to steal $200 from her casino employer.

Fourth, the respondent's misconduct occurred in 1988, when it ceased.

Fifth, the respondent was 19 years old at the time of the offense. I believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was isolated in nature. While visiting an aunt in Maryland three years ago, she was arrested when the house was raided when the police were looking for a fugitive. She was charged along with the rest of the inhabitants with harboring a fugitive, and various weapon and drug offenses. All charges were thereafter dismissed against the respondent as she was merely visiting her aunt.

Seventh, there were no social conditions in this case which may have contributed to the offense. Respondent merely needed money and she took the money "just to have some money."

Eighth, the respondent is 21 years old and has been off probation for 14 months. She is currently unemployed. She has enrolled in the Job Placement Training Assistance program, and she intends to enroll in Atlantic County College in the fall. She is not active in any community or other organizations. There is little evidence of her rehabilitation other than her stated remorse.

When considering the respondent's conduct as taken in context and the overall nature of her character, I find that the respondent's theft of $200 from her casino employer is sufficient to establish that the continued licensure of the respondent is inimical to the policies of the Casino Control Act.

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 polices of the Act, pursuant to section 86c(2), by means of section 86g.

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Goines 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 Hotel, Inc. for a Casino License*, 10 *N.J.A.R.* 244, 248 (1979). 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*, 10 *N.J.A.R.* 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closed. *Id.* at 296.

It is not readily apparent that the respondent's misconduct was aberrant and that she is otherwise a person of good character, honesty and integrity. The misconduct did involve her licensed employment, and the underlying circumstances do not mitigate the seriousness of the misconduct. In addition, while the respondent has fully accepted responsibility for her misconduct, she has only been off probation for 14 months, she is currently unemployed, and has presented very little evidence concerning her good character, honesty and integrity. Accordingly, I cannot state that the respondent presents no risk to the public nor to the integrity of the gaming industry in this state. The respondent has not earned the privilege of licensure. An examination of the whole person does not clearly and convincingly establish that Ms. Goines is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. *See, Boardwalk Regency Corp.*.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** and that license no. 71257-21 be revoked.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 24, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

5/29/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

May 31, 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Respondent's statement given to New Jersey State Police, dated April 24, 1988

P-2 Not in evidence

P-3 New Jersey State Police Investigation Report, dated April 27, 1988

P-4 Superior Court of New Jersey Pre-Trial Intervention Program report, dated July 22, 1988

P-5 Atlantic City Municipal Court Complaint, dated April 24, 1988

For the Respondent:

None

WITNESSES

For the Petitioner:

Tinaenetta M. Goines, the respondent

For the Respondent:

Tinaenetta M. Goines, the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-61
LICENSE NO. 049064-21
OAL DOCKET NO. CCC 9468-88
ORDER NO. 90-33-9

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

Complainant,

v.

STEVEN L. GOLDMAN

Respondent.

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 August 15, 1990,

IT IS on this 20th day of August 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

ORDER NO. 90-33-9

IT IS FURTHER ORDERED that Steven L. Goldman 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /DD
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9468-88
AGENCY DKT. NO. 89-61

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
STEVEN L. GOLDMAN,
Respondent

Charles Kimmel, Deputy Attorney General, for petitioner, (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Stephen A. White, Esq., for respondent

Record Closed: September 21, 1989 Decided: July 9, 1990

BEFORE **RICHARD J. MURPHY,** ALJ:

STATEMENT OF THE CASE, ISSUE AND PROCEDURAL HISTORY

The New Jersey Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint on September 1, 1988 with the Casino Control Commission (Commission) pursuant to N.J.S.A. 5:12-86, 89-91, 107-108, 129-130, seeking to revoke respondent Richard L. Goldman's casino employee license number 49064-21, because he was arrested and charged with theft by unlawful taking of $200 from a change booth at the Atlantis Hotel and Casino in June of 1988, while working as a part-time

("breaker") cashier, during his regular employment as a dealer. That charge was subsequently dismissed, after Goldman entered the pretrial intervention program (PTI). He denies that he committed the act of theft. At issue are:

(1) whether the licensee is disqualified from holding a casino employee license under N.J.S.A. 5:12-86c(2) and 86g for committing the offense of theft of unlawful taking, which indicates that his licensure would be inimical to the policies of the Casino Control Act and to casino operations in the State of New Jersey under 86c(2), even if this conduct has not or may not be prosecuted under the criminal laws of the state. (This question of inimicality includes consideration of the factors of rehabilitation as set forth in N.J.S.A. 5:12-90h)

(2) whether the licensee can establish 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) and 90b, considering the factors of rehabilitation as set forth in N.J.S.A. 5:12-90h[1]

FACTUAL DISCUSSION AND FINDINGS

Respondent, Steven L. Goldman disputes that he committed the offense of theft by unlawful taking by taking $200 from the change booth at the Atlantis Hotel Casino on June 16, 1988. In the alternative, he argues he has shown rehabilitation and has established his good character, honesty and integrity.

The Division relied on surveillance video tapes of Goldman's action, as well as testimony of several Atlantis employees. The former chief of investigations at the Atlantis Hotel and Casino between 1981 and 1989 was Charles J. Guenther, now the owner of Guenther Detective Agency, who testified that he met with the Atlantis Casino slot

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[1] **Procedural History:** The Casino Control Commission filed this matter with the Office of Administrative Law on December 29, 1988 for a hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq., and a prehearing was held on April 6, 1989, with a plenary hearing initially scheduled for June 19, 1989 then adjourned, and rescheduled and held on August 11, 1989. The record closed on September 21, 1989 after receipt of closing arguments and additional documentation, but the due date for submission of the initial decision was extended on several occasions for reasons not related to this case, including backlog cases, stemming from pending public utility matters affecting many New Jersey residents, and finally extended to July 13, 1990. I regret any hardship or inconvenience that this unavoidable delay may have caused the parties.

cashier supervisor on June 15, 1988, concerning five shortages in cash booths that had been reported over a week's span. During that time, Steven L. Goldman was working as a blackjack dealer at the Atlantis, and also as a part-time cashier, and worked in the booths showing shortages on three occasions, including June 7, 1988 (slot booth M $300 shortage), and June 15, 1988, slot booth D, (two shortages of $100). Mr. Guenther testified that the only "common denominator" in these thefts was the respondent and for that reason he was placed on the "E" file list, and subjected to daily video tape surveillance within the casino. Mr. Guenther stated that casino employees were generally aware of video "spot-monitoring" of cashier booths and other locations from several angles from video cameras located in "bubbles" on the ceilings. At approximately 3:36 p.m. on June 16, 1989, Guenther observed the respondent with his right hand in the cash drawer at the location of the largest bills containing ($100 denomination) and, he started watching the monitor closely at 15:37:19 p.m. (3:37:19 or 3 hours 37 minutes and 19 seconds). At the hearing, the video tape was shown and Mr. Guenther, as well as other witnesses including respondent gave their account of it. (P-6 to P-8)

Mr. Guenther stated that he observed what he considered to be the first suspicious move by the respondent at 15:36:33 p.m. (P8), when Goldman put his hands in the cash drawer and slid the top cash drawer forward, which, according to Guenther, was a violation of procedure and an unnecessary motion. He also observed the respondent move the cash drawer back in the drawer, start to crumple some bills, and then stop when a customer came up. Guenther stated that at 15:45:16 p.m. on tape P8, he observed the respondent looking around and then saw his right hand inside the cash drawer near the $100 bills and left hand at the other end of the drawer and concluded that he was "crimping" one or more $100 bills in his right hand, which he then removed (again with his right hand), coughed, and placed in his right hand pants pocket. See, P8 at 15:45:36 p.m.to 15:46:04 p.m. Guenther stated that the respondent subsequently went to the men's room. and the telephones and then went into a second cash booth. Guenther called surveillance. the respondent was read his Miranda rights and asked to empty his pockets, which contained two $100 bills crimped into the pocket, as well as a $50 bill. After the arrest. Guenther called surveillance to close and "audit" the booth and claims that no one entered that booth after the respondent. This is not disputed. As a result of the audit, a $200 cash shortage was found in the booth in which respondent was working, and a partially filled coin-can partially filled was also found in the rear of the booth.

The Division next offered testimony of Frank Grippaldi, formerly in surveillance with the Atlantis Hotel and Casino, before it closed. On June 16, 1988 Mr. Grippaldi was in the monitoring room conducting surveillance on booths "A" and "M", and was asked to monitor the respondent in booth "B", because of prior shortages. Mr. Grippaldi he observed the respondent with his right hand in the cash drawer scratching a section of that drawer, in what he desrcibed as a "crimping" motion, and later saw him again with the right hand in the drawer making a "crumbling" motion. On cross-examination, Mr. Grippaldi stated he saw cash in the respondent's hand coming out of the drawer but the videotape (I FIND) does not clearly show cash visible in respondent's right hand. He also stated that, if cashier's drawer is full, the cashier may put $100 bills in the back of the drawer, and also is allowed to arrange the denominations of the drawer for efficiency. There is no dispute that, on June 16, 1988, the drawer used by respondent in change booth B was arranged, (from the cashier's left to right) with the following denominations: $1; $5; $10; $20; $50; and $100, in the far right section of the drawer, closest to the surveillance cameras.

Policy guidelines adopted by the Atlantis on April 25, 1986 provided the following instructions to cashiers:

1. Display palms of hands to the surveillance camera before and after reaching for a cigarette, purse, pockets, tucking in shirt, etc.

2. Any time a tip is received, the tip (no matter the amount), must be displayed to the surveillance camera before placing the tip into the tip box.

3. A clear plastic purse may be carried into the booth. Contents should be limited to a cigarette container, no more then $3 in change, 1 comb or brush, a limited supply of cosmetics, a small amount of hard candy or cough drops.

4. Under no circumstances should a cashier carry currency on their person while working in a booth or zone. Impressment Team Members may not carry coin/currency on their person between the time they clock in and the time they clock out. Lockers have been assigned the time they clock out. Lockers have been assigned on 1 Mezzanine for the purpose of securing personal belongings.

5. Books, magazines, newspapers, extra articles of cloting, food, soda cans, and chairs are not permitted in the booths.

6. Never pass paper, gum, cigarettes, etc. to anyone outside the booth or visa versa.

7. Cigarettes, purses, candy, personal items, etc. may not be placed inside the cash drawer. (P17) (emphasis added)

The Division who was presented testimony by Irene Morris, former shift manager of the Atlantis Casino, responsible for overseeing procedures and operations in the slot cage. Ms. Morris, who is now employed by the Showboat Hotel Casino, was on duty on June 16, 1988 and observed the respondent. As to overall procedures, she stated that there is no need for cashiers to reach in to the cash drawer while it is not in use, and that they are instructed verbally to keep the cash drawer closed. She felt that the respondent's action in leaning on the drawer and placing his right hand in was a violation of Atlantis procedures. Ms. Morris couldn't testify as to the exact position of the $100 bills in respondent's cash drawer in booth M, but testified that they should be located on the extreme right hand of the drawer. She testified that Mr. Goldman was working that day as a "breaker", spelling other cashiers during breaks. She explained that, at the beginning of each working day, slot booths are "impressed" prior to the cashier assuming the booth by an impressment team, which rotates and pulls coin cans and ensures that all are filled and that nothing is missing. Cashier then enters the booth, counts it down, and signs the sheet that it meets its impressment. In the event that the impressment is then found to be short, the cashier is to call the supervisor and report it. She testified, that during her eight-and-a-half years as supervisor, she has not seen many instances where an impressment or cash count was in error. She was also asked to go down and "count-down" respondent's booth on June 16, 1988, and audit the different denomination bills as well as the coin-cans. She stated that the booth was $200 short, but does not how many coin-cans that shortage might have involved. Booths are not generally counted down when breakers leave the booth, unless they are checking out of the casino at the end of their shift. The breaker cashier also does not go in and assume someone's "impressment," but works out of his or her own drawer, except for a brief periods breaking other cashiers. Ms. Morris had no recollection of who had "manned" change booth B before the respondent's shift, but knew that the "count-down" was performed in the afternoon, after he had left the booth. She could not name the individuals who had impressed Mr. Goldman's booth early in the day. Ms. Morris also testified that shortages were not relatively frequent occurrences change booths, and that most of them occur as a result of human error. Cashiers are instructed not to bring large amounts of money on the job with them, and that they should leave any large sums on hand in lockers available at the casino. The maximum cash allowed to be in the possession of cashiers on the floor is $5, although this was not a formal or written policy and Ms. Morris could not say, for sure, whether Mr. Goldman had knowledge of this $5 maximum.

The fifth witness presented was Aloha Sanders, surveillance supervisor for Atlantis, now working at the Trump Plaza. She was also present in the surveillance monitoring room on June 16, 1986, obeserving the respondent, who was in slot booth B. Based on her observations, Ms. Sanders suspected that respondent had removed $200 cash from the drawer which he took out with his right hand and then placed in his right front pants pocket.

After the hearing, the Division submitted an affidavit from Brian Donahue, Division agent, stating that he had obtained an updated credit bureau file on Mr. Goldman and performed a limited investigation revealing that respondent had filed a chapter seven bankruptcy petition in the U.S. Bankruptcy Court, Philadelphia, Pennsylvania on July 9, 1986 and that a discharge was granted on February 19, 1987. This fact is not disputed by respondent, whose objection to its relevance was overruled.

Respondent Steven Goldman testified, as he had earlier testified before the Casino Control Commission (P-16), that he did not remove $200 from the cashier booth B on June 16, 1986, and that he had with him more than that amount in cash, in anticipation of taking his children to Orlando, Florida several days later. He is divorced (or separated) and is responsible for the support of four children. He had no criminal record before his 1988 arrest, and has had none since. He was admitted to the pretrial intervention program, and the charge of theft by unlawfully taking was dismissed. He had worked at the Atlantis since 1984, was licensed for four games, and also had been placed on various committees, by vote of the dealers. His dual capacity in the Atlantis is as a floor person in blackjack and part-time cashier earns him approximately $28,000 to $32,000 a year, depending on the amount of hours worked. He had no prior incidents or "writeups" during his four years at the Atlantis, beyond the 1988 arrest for unlawful taking. He was not aware of any maximum dollar limit on the amount the cashiers were allowed to carry on duty, and indicated that he had approximately $319 with him on June 16, 1990, to be used for his childrens' trip to Orlando. He denied any knowledge of written policies by Atlantis prohibiting him from putting his hands in his pocket while in the change booth, and denies he was ever informed of such a policy during his brief training (which he described as a "ten minute crash course") as a part-time "breaker" cashier. He emphatically denies taking the $200 or any money from change booth B on June 16, 1988, or from any other change booth on any other occasion.

Goldman admits that he was terminated by the Tropicana on July 21, 1988, (from which he had obtained employment after leaving the Atlantis) on grounds that he had failed to disclose his arrest and charge of theft by unlawfully taking at the Atlantis. The official reason for termination was falsification, (P-15), but respondent denies that he was attempting to mislead anyone and did not consider himself to have been placed under arrest at the Atlantis on June 16, 1988. As to his actions in leaning on the change booth drawer, he admitted that he thought it was wrong to do that, but did so because he was exhausted from working two jobs. He knew that, as a dealer, he was supposed to keep his hands constantly in view of the camera and to "clear them" (show them to the camera), if his hands moved out of camera range. He worked as many as 105 hours through some seven day periods to support himself and his family and claimed that he was often in a state of extreme exhaustion. He arranged his cash drawer as a breaker by putting $100 bills behind the $20s in the back of the far right end of the drawer, but denies crumpling or taking any cash from that drawer.

Having observed the surveillance video tapes submitted by the Division of the respondent's actions on June 16, 1988, and having heard the testimony of the respondent, and the Division's witness as to these tapes and other matters, I **FIND** as a matter of fact that the tapes, in particular P-8 at 15:45:25 to 15:46:05 show the respondent Steven L. Goldman crumpling $100 bills with his right hand in the cash drawer and then removing those bills and placing them in his right hand pocket. The bills are not clearly visible in his hand on the tape, but he can be seen crumpling or rolling the bills, and two one hundred dollar bills were later found in his wallet. In light of the unmistakable evidence of the video tape and physical evidence, respondent's denial is not credible, as a matter of fact.

I **FURTHER FIND** that respondent Steven L. Goldman intentionally falsified information to the Tropicana Hotel on his employment application and that he was terminated from that position because of his falsification. (P-14 and P-15). There is no dispute of fact on this point.

Respondent offers a number of letters of reference as to his good character, honesty and integrity, including ones from his Rabbi, current employers, and landlord, who is also an employer.

There is no dispute as to the above facts, except as otherwise noted and found, and I so **FIND.**

LEGAL DISCUSSION AND CONCLUSIONS

At issue is whether Steven L. Goldman is disqualified from holding a license under N.J.S.A. 5:12-86c2 and 86g for commission of the offense of theft by unlawful taking, and, beyond that, whether he has established by clear and convincing evidence that he possess the requiste good character, honesty and integrity required by N.J.S.A. 5:89b(2) and 90b.

Both determination of inimicality under 86c2 and of good character, honesty and integrity under 89b2, 90b, require consideration of the factors of rehabilitation, as set forth under N.J.S.A. 5:12-90h. See, Division of Gaming Enforcement v. Davis, 8 N.J.A.R. 301, 314 (1985); Dunston v. Division of Gaming Enforcement, Superior Court of New Jersey, Appellate Division, decided April 10, 1990, A-197-89T3:

> [i]n determining whether the applicant has affirmatively demonstrated his [or her] 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 or conduct;
>
> (3) The circumstances under which the offense or conduct occurred;
>
> (4) The date of the offense or conduct;
>
> (5) The age of the applicant when the offense or conduct was committed;
>
> (6) Whether the offense or conduct was an isoloated or repeated incident;
>
> (7) Any social conditions which may have contributed to the offense of conduct;
>
> (8) Any evidence of rehabilitation, including good conduct in prison or in the community, couneling or psyciatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, with recommendation of persons who have or have had the applicant under the supervision. N.J.S.A. 5:12-90h [emphasis added].

The Division argues that it has established by a preponderance of the believable evidence that the respondent committed the act of theft against the Atlantis Hotel Casino on June 16, 1988 and that respondent's testimony is not credible.

Respondent characterizes the video tape evidence as inconclusive and not sufficient to support the finding that he committed the alleged act of theft. He also notes that he completed the pretrial intervention program and that the indictment against him was consequently dismissed (J-1). He attacks the testimony of Investigator Guenther, Frank Grippaldi, and Irene Morris, as riddled with inconsistencies and inaccuracies, and notes that no positive identification was made by him, on the record, by the State's witnesses. He argues that, as a full time blackjack dealer, he was not subject to the same regulations or given the same training as regular (full-time) that of change booth cashiers, and, in any event, the only regulation was a suggestion by the shift manager that cashiers not carry large quantities of cash on their person. Respondent characterizes cash shortages in change booths as a relatively common occurrence in the casino and argues that he would not jeopardize a position of earning approximately $28,000 to $30,000 a year for a few hundred dollars. He cites his otherwise excellent work record in the industry, which the Division does not dispute, except for his dismissal by the Tropicana for falsification on his employment application. In the alternative, respondent argues that he is fully rehabilitated, within the meaning of N.J.S.A. 5:12-90h, and should be allowed to continue to earn a living in the casino industry, for which he holds a training in four games.

On the basis of the above finding of fact as to respondent's action on June 16, 1988, I **CONCLUDE**, as a matter of law, that he committed conduct amounting to theft by unlawful taking (fourth degree) contrary to N.J.S.A. 2C:20-3 by removing $200 cash from a change booth at the Atlantis Hotel and Casino. I **FURTHER CONCLUDE**, considering all of the factors of rehabilitation, that his continued licensure would be inimical under N.J.S.A. 5:12-86c(2) and that his license should be revoked. The factors of his rehabilitation, which are relevant both to the question of inimicality and good character, honesty and integrity, are discussed below:

(1) Nature and duties of the position: The positions of dealer, as well as that as cashier, are at the very heart of a casino's gaming operation and require much contact with patrons and accountability for funds entrusted;

(2) Nature and seriousness of the offense or conduct: The conduct of theft by unlawful taking of cash from the cashier's booth strikes at the very core of the casino's financial operation;

(3) The circumstances of the conduct: Beyond the respondent's denial of the conduct, which I do not find to be credible, given the video tape evidence catching him red-handed in the act, he offers no mitigating circumstances and I find none in the record. There is evidence of a financial motive, in the form of his recent bankruptcy and his heavy support obligations for his four children;

(4) Date of offense for conduct: June 16, 1988;

(5) The age of the applicant; 42 years of age;

(6) Isolated or repeated conduct: There is no conclusive evidence that the conduct of unlawful taking was repeated by the respondent, although the Division put him under surveillance because of shortages in change booths where he had worked;

(7) Social conditions: Although the respondent advances no social conditions, in that he does not admit the offense, he has heavy financial obligations and his relatively recent bankruptcy may have played a role in his action;

(8) Evidence of rehabilitation: Respondent offers a number of character references from current employers, as well as recommendations from the casino industry, in which he has not worked for the last two years.

Considering all the above factors, and noting especially the highly sensitive nature of the duties of dealers and cashiers, as well as the extremely serious nature of the offense of theft of cash from the booth, and absence of any mitigating circumstances, as well as any compelling proof of rehabilitation, I **CONCLUDE** that licensure of Steven L. Goldman would be inimical to the policies of the Casino Control Act and to casino operations under N.J.S.A. 5:12-86c2.

I **FURTHER CONCLUDE** that respondent has failed to demonstrate, by clear and convincing evidence, his good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b2, 90b, considering the factors of rehabilitation as set forth in 90h, again, because of the extremely serious nature of conduct of theft in the casino and total lack of mitigating circumstances or convincing evidence of rehabilitation. This conclusion as

good character, honesty and integrity is also supported by the finding of fact concerning respondent's falsification of an employment application to Tropicana, on which he failed to disclose his arrest for theft by unlawfu taking at the Atlantis Hotel and Casino.

This is a tragic case in the sense that Mr. Goldman's record of employment in the casino industry was otherwise an excellent one. But the clear and convincing proof of his offense of theft by unlawful taking at the Atlantis requires that his license be revoked. So **ORDERED.**

This recommended decision may be adopted, 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.

7.9.90
DATE

Leonard Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

7/11/90
DATE

Kim Wooley
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 13 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

tmp

WITNESSES

For Petitioner:

Charles Guenther

Frank Grippaldi

Irene Morris

Aloha Sanders

For Respondent:

Steven Goldman

EXHIBITS

J-1	Order of dismissal
R-1	PTI documentation
R-2-R-11	Letter of reference
P-1	New Jersey State Police investiation report dated 6-16-88
P-2	New Jersey State Police supplementary investigation report dated 6-17-88
P-3	New Jersey State Police arrest report dated 6-16-88
P-4	Atlantic City Municipal Court complaint
P-5	Casino Control Commission order suspending Mr. Goldman's casino employee license dated 9-23-88
P-6-P-8	Videotapes
P-14	Mr. Goldman's employment application at Tropicana
P-15	Notice of Termination from Tropicana
P-16	Casino Control Commission transcript from 9-22-88
P-17	Atlantis policy as to personal property in booths and changeaprons
P-18	Affidavit of Brian Donaghue
P-19	Updated credit profile on Steven L. Goldman

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-445
LICENSE NO. 43804-21
REGISTRATION NO. 42931-40
OAL DOCKET NO. 5721-89
ORDER NO. 90-44-15

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF DENNIS C. GORMAN

ORDER

A hearing 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 November 7, 1990,

IT IS on this 26th day of November, 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining 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 this denial shall not affect Dennis C. Gorman's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5721-89
AGENCY DKT. NO. 89-EA-445

DENNIS C. GORMAN,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Stephen A. White, Esq., for the petitioner

Norma Stancil, Deputy Attorney General for the respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: **September 12, 1990** Decided: September 26, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Dennis C. Gorman, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (box person and blackjack dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner is disqualified pursuant to section 86b for failure to disclose material information, and therefore, he lacked the requisite good character.

honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so he could be employed as a boxperson and blackjack dealer at Caesar's Hotel and Casino. By letter to the Commission, dated May 31, 1989, the Division objected to the petitioner's application for licensure as a boxperson and blackjack dealer pursuant to section 89b, alleging that the petitioner failed to disclose material information on his application for licensure regarding a material fact pertaining to the qualification criteria. The Division also asserts that the petitioner lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference. Based upon the report, the Commission notified the petitioner on July 11, 1989, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated July 20, 1989, which was received by the Commission on July 24, 1989, the petitioner requested a hearing. On July 31, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on August 3, 1989, 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 in the matter before Administrative Law Judge Lillard E. Law on October 3, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. 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 the material facts pertaining to the qualification criteria for his casino employee licensure within the meaning of section 86b.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

A hearing was scheduled to commence on January 9, 1990. By letter, dated December 14, 1989, and received on December 21, 1989, the petitioner's counsel

requested an adjournment of the proceedings as he had been recently retained. This request for an adjournment was granted, and the hearing was rescheduled. A hearing was held on May 8, 1990, in the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey.

The record remained open in order to afford the deputy attorney general the opportunity to authenticate the petitioner's documentary exhibits. By letter dated May 17, 1990, the Division requested an extension of time in which to respond to the petitioner's letters of reference which were offered in evidence at the hearing. The Division alleged that in its attempt to authenticate the documents, new evidence was discovered relating to the petitioner's failure to appear in court and failure to pay numerous motor vehicle fines. A telephone conference was held between the parties on May 21, 1990. At that time, I granted the Division's request to keep the record open so as to allow the Division the opportunity to file a formal motion to reopen its case. By notice dated May 25, 1990, which was filed on May 31, 1990, the Division moved for an order allowing it to reopen its case and offer additional evidence which had been newly discovered as a direct result of attempting to authenticate the petitioner's documentary exhibits. The submission date for the motion was set for June 15, 1990. The petitioner's counsel objected to the Division's motion. By order dated June 18, 1990, I granted the Division's motion to reopen its case for good cause shown.

A telephone conference was held with the parties on July 6, 1990. At that time it was agreed that the parties would enter into a stipulation of facts regarding the newly discovered evidence which the Division now sought to introduce. By letter dated July 19, 1990, the Division forwarded a proposed stipulation of facts and attached exhibits to the petitioner's counsel. By letter dated September 7, 1990, and received by me on September 12, 1990, the Division filed the executed stipulation of facts and attached exhibits with me. As such, the record closed on September 12, 1990.

THE FACTS

At one point in his life, the petitioner, Dennis C. Gorman, had a relationship with Diane L. Mulholland. This relationship was terminated by Ms. Mulholland. Thereafter, the petitioner allegedly continued to harass Ms. Mulholland. Ms. Mulholland made several complaints to the police, and she obtained temporary restraining orders (R-1, R-2, R-3, R-7 & R-11).

On December 7, 1985, the petitioner allegedly forced his way into Ms. Mulholland's home, began yelling at her and began retrieving things he had given her. He pulled the sheets off of the bed, slammed Ms. Mulholland against the door, and ripped a gold chain off her neck (R-3 & R-22). On May 2, 1986, two summonses and complaints were issued in the Ventnor Municipal Court charging the petitioner with harassment, simple assault and burglary (R-23 & R-23a).

On March 18, 1986, the petitioner allegedly became argumentative with and pushed Ms. Mulholland in a bar in Margate. The petitioner was arrested by the police and was charged with simple assault in violation of N.J.S.A. 2C:12-1a(1) (R-12 & R-13). The charge was dismissed on February 2, 1987, in accordance with a plea agreement entered into by the petitioner with the Atlantic County Prosecutor's Office (R-13). A third restraining order was entered in the Superior Court against the petitioner on March 20, 1986 (R-14).

On March 2, 1986, Ms. Mulholland reported to the police that her home had been burglarized, and that she suspected the petitioner of being the burglar (R-10). Property of a value over $1,300 was reported missing. The police discovered that entry was made into the home through a window and fingerprints were discovered on the inside and outside of the window (R-16). The Atlantic County Sheriff's Department subsequently identified the fingerprints on the window as the petitioner's (R-15). On April 28, 1986, a complaint and summons was issued in the Ventnor Municipal Court charging the petitioner with burglary and theft (third degree) (R-17).

During the course of the investigation concerning the burglary, Ms. Mulholland alleged that the petitioner had entered her home in February 1986 while she was in Florida, removed her George card (bank card), withdrew money from her account, and then returned the card (R-8 & R-19). Ms. Mulholland stated the petitioner knew her secret identification number (her Social Security number), and bank records indicate that the withdrawal was made on February 19, 1986 at the Tropicana Hotel and Casino, which was the petitioner's then place of employment (R-9). On May 1, 1986, a summons and complaint was issued against the petitioner in the Ventnor Municipal Court charging him with credit card theft and theft by deception (fourth degree) based upon his alleged use of the George card (R-21).

On May 20, 1986, the petitioner was indicted by the Atlantic County Grand Jury based upon the filing of the four above-discussed municipal complaints. He was charged in Indictment No. 86-05-0960 with two counts of burglary in violation of N.J.S.A. 2C:18-2, theft by unlawful taking (fourth degree) in violation of N.J.S.A. 2C:20-3, theft by deception (fourth degree) in violation of N.J.S.A. 2C:20-4, and theft by unlawful taking (third degree) in violation of N.J.S.A. 2C:20-3. [R-24] On August 7, 1986, the petitioner entered a plea of not guilty to the charges. On November 12, 1986, he retracted his plea of not guilty and entered a plea of guilty to count two of the Ventnor Municipal Court complaint filed April 28, 1986 (R-17), charging him with theft by unlawful taking of property valued over $1,300, after the count was amended to a disorderly persons offense of theft under $200, and counts one and two of the Ventnor Municipal Court complaint filed May 2, 1986 (R-23a) charging the petitioner with harassment in violation of N.J.S.A. 2C:33-4c and simple assault in violation of N.J.S.A. 2C:12-1a. The remaining counts of the indictment and municipal complaints were dismissed. On December 12, 1986, the petitioner was sentenced to serve one year on probation, to pay $2,400 in restitution, and to pay a $90 Violent Crimes Compensation Board penalty. [R-25]

On December 22, 1986, the petitioner was stopped by the Northfield police for a traffic violation (following too close in violation of N.J.S.A. 39:4-89). When requested to produce his driver's license, the petitioner stated that he did not have his driver's license with him. Upon being asked to identify himself for a computer driver's license check in the NCIC system, the petitioner stated that his driving privileges probably were suspended. The NCIC check revealed that the petitioner's driving privileges in this State were, in fact, suspended. The petitioner was then arrested for driving while suspended. While securing the petitioner's car, the police discovered the remains of what appeared to be a marijuana cigarette and numerous motor vehicle summonses. [R-26 & R-27] A summons and complaint was issued to the petitioner by the Northfield Municipal Court charging him with possession of less than 25 grams of marijuana in violation of N.J.S.A. 24:21-20a(4). On June 18, 1987, the petitioner received a conditional discharge for six months. The conditional discharge was extended to May 1, 1988 and was ultimately granted on June 8, 1988 [R-28]

On August 26, 1987, the petitioner entered Bradlee's Department Store in Egg Harbor Township. The petitioner allegedly switched the price tag on a $109 AT&T cordless telephone to a $29.99 price tag. When the item was rung up at the cash register, the machine indicated that the $29.99 item was then on sale for $19.99

The petitioner was then detained and thereafter arrested by the Egg Harbor Township Police Department for shoplifting. On June 8, 1988, the petitioner pleaded not guilty to this charge. After trial, he was found guilty and was sentenced to pay a $150 fine, pay a $30 Violent Crimes Compensation Board penalty, and was ordered to pay $25 in court costs. [R-30]

On December 22, 1987, the petitioner was found guilty of violating the probation imposed upon him on December 12, 1986 (R-32). The basis of the charge was his failure to pay his court-ordered restitution. The petitioner's probation was extended for an additional two years. As he had only paid $30 in one year towards his $2,400 restitution order, he was again ordered to make restitution and a six-month suspended sentence was imposed (R-32 & R-36). The petitioner's first restitution payment was made with a check which was returned for insufficient funds (R-36).

On June 10, 1988, the petitioner was again found guilty of violating his probation (R-33). The basis of the charges was his arrest on the marijuana and shoplifting charges and his failure to notify the Probation Department of his arrest (R-36). The petitioner's probation was terminated and he was ordered to be incarcerated for 30 days and to continue payments on his $2,400 restitution order (R-33).

After his incarceration, the petitioner failed to make any restitution payments. He testified that he thought his restitution order terminated upon his incarceration. On December 6, 1988, his probation officer sent him a letter informing him that he still owed $1805 in restitution, scheduled an appointment to meet with him, and recommended that he bring a "substantial catch-up payment" (R-35). On December 9, 1988, the petitioner met with his probation officer and agreed to make weekly payments of not less than $20. The petitioner made a $20 payment on December 12, 1988, and January 6 & 12, 1989. He has made no payments since January 12, 1989, and has a current balance of $1725. His probation officer now intends to return the case to the Superior Court for an Order to Show Cause why the petitioner should not be held in contempt for his willful failure to make restitution.

On August 27, 1986, the petitioner completed an application for renewal of his casino employee license (R-34). In response to question 6, the petitioner indicated that since he had been originally licensed or since his last license renewal he had not been "arrested, taken into custody, charged or indicted . . . for the alleged

commission of a crime or other offense, including any high misdemeanor, felony, misdemeanor, or disorderly persons offense. . . . " On November 30, 1988, the petitioner was telephonically interviewed by Division Agent Bard H. Goldstein. Agent Goldstein read question 6 to the petitioner in its entirety, and the petitioner indicated that he understood the question. The petitioner responded that his only arrest was a 1985 arrest in Ventnor for a disorderly persons offense. The petitioner denied any other arrests or charges. The petitioner was then asked about his March 18, 1986 charges. The petitioner responded that he had forgotten about them. He then responded that he had no other arrests or charges. He was then asked about his two violations of probation. He responded they were part of the original Ventnor charges. He again responded that he had no other arrests or charges. When questioned about his December 22, 1986 arrest on marijuana charges, he answered that the charges were dismissed, and he had forgotten about it. He again stated that he had no other arrests or charges. When questioned about his August 26, 1987, arrest for shoplifting, he again stated he had forgotten about it and that he had paid a $200 fine.

The petitioner is 34 years old. He was raised in the Atlantic City area by his mother. He is a 1977 graduate of Fairleigh Dickenson University where he majored in biology with a minor in chemistry. He resides with his mother who has been disabled since 1987 when she underwent brain surgery. He also resides with his fiancee and her two-year-old son, both of whom he helps to support.

In 1983, the petitioner became employed as a craps dealer at the Claridge Hotel and Casino. He was terminated from this part-time position after eight months because of a "management changeover." From the spring of 1983 until November 1986, the petitioner worked as a craps dealer at the Tropicana Hotel and Casino. It was during this time period that the petitioner also became licensed as a blackjack dealer. The petitioner was also terminated from this position because of a "management changeover." He stated he was terminated because he dealt blackjack too slow. He indicated that he only dealt blackjack on a few occasions on a substitute, fill-in basis. Since March 1987, the petitioner has been employed as a craps dealer at Caesar's Boardwalk Regency Hotel and Casino. The petitioner is also the holder of a casino hotel employee registration; however, the Division is taking no action against that registration.

The petitioner has participated in the Maloney Bikeathon and has supported the Cancer and Muscular Distrophy Societies. He has also played in charity basketball

games. He has been receiving psychological counseling for two months through an employees' program at Caesar's. He is also experiencing financial difficulties due to his mother's hospitalization bills.

The petitioner submitted four letters of recommendation in his behalf. The first, written by Enrique Urdaneta, international marketing executive, Caesar's Atlantic City, dated May 7, 1990, provides in pertinent part:

> I have had the pleasure of knowing Dennis for six years and must honestly say that during this period of time I found him to be a person of strong values and good character. I firmly believe that Dennis' good values far outweigh small mistakes we all commit as people. [P-1]

The second, written by Pamela Falk-Singer, ACSW, of EAP Consultants, and dated May 7, 1990, provides that the petitioner

> has been receiving counseling through his employers' employee assistance program. He appears to be making a sincere attempt to resolve personal problems which impact on his life and has done so voluntarily and with a positive attitude.
>
> He has discussed his legal concerns with me and I would like to support him in whatever way possible to resolve this concern. [P-2]

The third, written by James Pappas, Jr., of Paine Webber and dated May 4, 1990, provides:

> I have been acquainted with Dennis Gorman for 7 years. During this period he has been creditable and trustworthy. Many of our transactions have been made over the phone or by hand shake. None of these have failed. [P-3]

The fourth letter, written by William F. Helbling, president of Yardley Group, dated May 7, 1990 provides:

> Please be advised that I have been a personal friend and business associate of Dennis Gorman for the past twelve years.
>
> Dennis is a very upstanding, honorable and ethical man. I can state this unequivocally because I have known him for so long. He is a man who honors his responsibilities and commitments, and one whom I can recommend to any third party as a very honest and trustworthy person. [P-4]

In response to the order allowing the Division to reopen its case, the Division submitted the following stipulated facts:

Subsequent to the original hearing, Agent Goldstein contacted by telephone individuals who authored the letters of reference offered at the hearing held on May 8, 1990 and marked for identification as Exhibits P-1 through P-4. Agent Goldstein's contacts verified the authenticity of these documents.

During this inquiry, information was received from an individual who wrote a letter recommending the petitioner, that the petitioner had been cited for operating a motor vehicle while his driver's license was suspended or revoked. Additional information was received from the Division of Motor Vehicles that the petitioner has twenty-three (23) open suspensions for failure to appear based upon operating a motor vehicle while his driver's license was suspended or revoked as well as other motor vehicle violations and for failure to pay fines. The information indicates that petitioner's driver's license has been suspended since 1980 (J-2 and J-3).

On May 16, 1990, Agent Goldstein contacted the Somers Point Municipal Court Clerk. He discovered that on January 3, 1990, the petitioner was stopped for speeding and driving while on the revoked list. On January 23, 1990, the petitioner pled guilty to the speeding charge and was fined $285. Petitioner pled not guilty to the charge of driving while on the revoked list and the case was postponed to March 22, 1990. The petitioner failed to appear at the March 22, 1990 hearing and a bench warrant was issued for his arrest (J-3 and J-5).

On May 16, 1990, Agent Goldstein contacted the Northfield Municipal Court Clerk who told Agent Goldstein that the petitioner's driver's license was suspended on November 29, 1989, for failure to pay the balance of a $1,200 fine imposed due to being charged with operating a motor vehicle while on the revoked list in 1986, and that the balance due is $165 (J-3).

On May 17, 1990, Agent Goldstein contacted the Atlantic City Municipal Court. He was told that multiple summonses for operating a motor vehicle while suspended have been issued against the petitioner, and that he owes in excess of $2,105 in fines (J-3). Later that day, Agent Goldstein contacted the Ocean City Municipal Court Clerk. He was told that their records indicated that the petitioner failure to appear in court for a motor vehicle violation and that a bench warrant was issued on November 17, 1986 which is still active (J-3 and J-4).

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On May 18, 1990, Agent Goldstein contacted the Margate City Municipal Court Clerk. He was told that on September 6, 1985, the petitioner was given a summons for driving while on the revoked list. On January 15, 1988, petitioner failed to appear in court and his driver's license was revoked. On May 25, 1990, a bench warrant was issued for the petitioner's arrest (J-3 and J-6).

I **FIND** all of the above as **FACT**.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident, it did attempt to refute the petitioner's current good character, honesty and integrity. As such, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. During both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner was not candid and forthright regarding his testimony. As such, I am extremely skeptical of his testimony.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> b. 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

....

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and

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> regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.
>
> ....
>
> e. 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.

DISCUSSION

The Division contends first that the petitioner's nondisclosure of his arrest record on his Employee License Renewal Application constitutes a violation of N.J.S.A. 5:12-86b, and that, accordingly, he is disqualified from licensure, and second, by means of section 90b, which incorporates section 89b(2) by reference, that the petitioner lacks the necessary good character, honesty and integrity required for licensure.

(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 the Application 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 pages 15-16 of its Final Decision:

> So that fully informed decisions 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 Legislature 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. 5:12-7(b)(8); 80(a), (b) and (c); 89(b); 90(b) and 91(b). 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, Casino Control Commission, 78-EA-8 (Jan. 30, 1980) Report and Recommendation of Hearing Examiner at 19 (June 27, 1979). 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, Final Decision at 16; In the Matter of the Application of Steven M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), affirmed, Casino Control Commission (Jan. 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. NO. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (Sept. 5, 1980). For a nondisclosure to result in a disqualification it must have been committed intentionally or in disregard of the regulatory process. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244 at 253 (1979).

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 91 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.

In this case, the petitioner failed to list several arrests on his Employee License Renewal Application. When questioned about these arrests, he conveniently indicated that he had forgotten about them. How does one forget being incarcerated a mere five months before the interview? How does one forget an indictment on a series of charges which was filed just three months before the petitioner completed his renewal application? How does one forget violations of probation while still being on probation? Needless to say, I do not accept the

petitioner's explanation. I **FIND** that the nondisclosure was an intentional nondisclosure premised upon the belief that the disclosure of the information would have adversely affected his application for licensure and that the nondisclosure was made in disregard of the regulatory process.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner committed a violation of N.J.S.A. 5:12-86b, which disqualifies him from continued licensure.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Gorman was required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel Inc. for a Casino license, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

The petitioner has a history of assaultive and dishonest behavior. His numerous violations of court orders, temporary restraining orders, and motor vehicle laws reflect a total disregard of our laws and a flouting of authority. This total disregard for authority was the reason then Superior Court Judge Steven P. Perskie finally incarcerated the petitioner. Judge Perskie specifically cited the petitioner's willful violation of a court order and the need to provide credibility and enforcement of a court order as the reasons necessitating incarceration (R-33). Now we learn that the petitioner has 23 open suspensions for failure to appear in connection with operating a motor vehicle while his driver's license was suspended or revoked and

that there are at least three outstanding bench warrants for his arrest. One of the reasons his probation was violated is that he did not inform his probation officer of his subsequent arrests. His probation officer now intends to seek another probation violation for the petitioner's failure to comply with the court order requiring him to make restitution.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Dennis C. Gorman for the issuance/renewal of a casino employee license be **DENIED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 28, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

9/27/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 28 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

cad

DOCUMENTS IN EVIDENCE

Joint Exhibits:

J-1 Stipulation of Facts

J-2 Certified Abstract of Driver History Record, dated May 14, 1990

J-3 Affidavit of Agent Goldstein, dated May 25, 1990

J-4 Bench Warrant issued by Ocean City Municipal Court, dated November 17, 1986

J-5 Bench Warrant issued by Somers Point Municipal Court, dated March 22, 1990

J-6 Bench Warrant issued by Margate Municipal Court, dated May 25, 1990

For the Petitioner:

P-1 Letter of Enrique Urdaneta, International Marketing Executive, Caesar's Atlantic City, dated May 7, 1990

P-2 Letter of Pamela Falk-Singer, ACSW, EAP Consultants, dated May 7, 1990

P-3 Letter of James Pappas, Jr., Paine Webber, dated May 4, 1990

P-4 Letter of William F. Helbling, President of the Yardley Group, dated May 7, 1990

For the Respondent:

R-1 Ventor City Police Department Voluntary Statement of Diana Mulholland, dated October 11, 1985

R--2 Ventnor City Police Department Voluntary Statement of Mary C. Kohler, dated October 11, 1985

R-3 Ventor City Police Department Voluntary Statement of Diana Mulholland, dated December 11, 1985

R-4 Ventnor City Police Department Voluntary Statement of Mary C. Kohler, dated February 21, 1986

R-5 Ventnor City Police Department Voluntary Statement of Diana Mulholland, dated February 23, 1986

R-6 Atlantic County Chancery Division, Family Part, Domestic Violence Complaint, dated February 28, 1986

R-7 Atlantic County Chancery Division, Family Part, Temporary Restraining Order, dated February 28, 1986

R-8 Ventnor City Police Department Voluntary Statement of Diana Mulholland, dated March 3, 1986

R-9 Ventnor Police Department Property Report, dated March 3, 1986

R-10 Ventnor City Police Department Voluntary Statement of Diana Mulholland, dated March 3, 1986

R-11 Atlantic County Chancery Division, Family Part, Temporary Restraining Order, dated March 13, 1986

R-12 Margate City Police Department Arrest Report dated March 19, 1986, Police Identification Record, dated March 18, 1986 and Domestic Violence Offense Report, dated March18, 1986

R-13 Margate City Municipal Court Complaint, dated March 18, 1986

R-14 Atlantic County Chancery Division, Family Part, Restraining Order, dated March20, 1986 and Notice

R-15 Atlantic County Sheriff's Department Latent Fingerprint Report, dated April 16, 1986

R-16 Ventnor City Police Department Investigation Report, Case No. 86-01565, dated April 23, 1986

R-17 Ventnor Municipal Court Complaint, dated April 28, 1986

R-18 Ventnor City Police Department Arrest Report, Case No. 86-01565, dated April 30, 1986

R-19 Ventnor City Police Department Investigation Report, Case No. 86-1565-A, dated May 1, 1986

R-20 Ventnor City Police Department Arrest Report, Case No. 86-01565-A, dated May 1, 1986

R-21 Ventnor Municipal Court Complaint S563025, dated May 1, 1986

R-22 Ventnor City Police Department Investigation Report, Case No. 85-12415, dated May 2, 1986

R-23 Ventnor Municipal Court Complaint S335498, dated May 2, 1986

R-23a Ventnor Municipal Court Complaint S335499, dated May 2, 1986

R-24 Atlantic County Superior Court Indictment No. 86-05-0960

R-25 Atlantic County Superior Court Judgment of Conviction on Ventnor Municipal Court Summons

R-26 Northfield Police Department Investigation Report, dated December 22, 1986

R-27 Northfield Police Department Arrest Report, dated December 22, 1986

R-28 Northfield Municipal Court Complaint S651023, dated December 22, 1986

R-29 Egg Harbor Township Police Department Arrest Report, dated August 26, 1987

R-30 Egg Harbor Township Municipal Court Complaint S655314, dated August 26, 1987

R-31 Ventor City Police Department letter dated November 30, 1987

R-32 Atlantic County Superior Court Judgment of Conviction of Violation of Probation

R-33 Atlantic County Superior Court Order for Commitment re Sentencing on June 10, 1988

R-34 Employee License Renewal Application, dated August 27, 1986

R-35 Letter of Probation Officer Richard Sera, Atlantic County Probation Department, dated December 6, 1988

R-36 Violation of Probation charges, dated May 17, 1988

R-37 Not in evidence

R-38 CCMO Sentencing Fact Sheet (Probation Intake Record), dated December 1, 1986

WITNESSES

For the Petitioner:

Dennis C. Gorman, the petitioner

For the Respondent:

Agent Bard H. Goldstein, Division of Gaming Enforcement
Richard K. Sera, Atlantic County Probation Officer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-158
LICENSE NO. 51306-21
OAL DOCKET NOS. CCC 611-90;
CCC 6-89 and CCC 3766-88
ORDER NO. 90-31-4

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

Complainant,

v.

ORDER

LEONARD GRATE,

Respondent.

A hearing 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 the Commission having considered the entire record of these proceedings at its public meeting of August 1, 1990,

IT IS on this 10th day of August 1990, ORDERED that the initial decision is modified as follows:

> While the Commission concurs with the ALJ's finding that the respondent is disqualified pursuant to N.J.S.A. 5:12-86c(2), the finding that he nevertheless established his good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2) and -90b is rejected as contrary to the weight of the evidence.
>
> The principal basis for the respondent's disqualification is his

conviction in 1985 for theft by unlawful taking contrary to N.J.S.A. 2C:20-3, a disorderly persons offense. The offense involved a theft of $100 in coins by the respondent in the course of his employment as a casino security officer.

Upon consideration of all pertinent factors, Donna Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985), the evidence which supports the conclusion that the respondent is disqualified also establishes that he has failed to demonstrate the good character honesty, and integrity required for licensure as a casino employee. In the Matter of the Application of Charles Clentchscale for Licensure as a Casino Employee, Docket No. 79-EA-113, April 22, 1990; Cf., Doris Dunston v. Division of Gaming Enforcement, 240 N.J. Super 53 (App. Div. 1990)

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 611-90
AGENCY DKT. NO. 85-158
(CCC 3766-88 & CCC 006-89 ON REMAND)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
LEONARD GRATE,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for the petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Leonard Grate, the respondent pro se

Record Closed: June 12, 1990 Decided: June 19, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Leonard Grate's casino employee license no. 51306-21, pursuant to N.J.S.A. 5:12-90 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's license by reason of its contention that the respondent had been convicted of a criminal

offense which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4) (now section 86c(2)), and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The respondent contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The respondent had obtained a casino employee license from the Commission so he could be employed as a security officer at the Sands Hotel and Casino. By complaint to the Commission, filed April 22, 1985, the Division objected to the respondent's continued licensure, asserting that the respondent had committed the offense of theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, which is a disqualifying offense under section 86c(4) (now section 86c(2)). The Division also objected pursuant to section 89b(2). Based upon the complaint, the Commission notified the respondent on April 23, 1985, that he had the right to a hearing, and that failure to respond within 15 days could result in his license being revoked (P-4). On July 19, 1985, the Commission issued an order deferring action on the Division's application for the suspension of the respondent's casino employee license until resolution of the criminal proceedings (P-3). By application dated May 3, 1988, which was received by the Commission on May 9, 1988, the respondent requested a hearing. On May 16, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on May 23, 1988, 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. Also by letter dated May 16, 1988, the Commission notified the respondent that it had transmitted the case to the Office of Administrative Law for a hearing and informed the respondent that his casino employee license had expired in May 1987 (P-2).

On September 27, 1988, the Office of Administrative Law notified the parties that a prehearing conference was to be held on October 18, 1988, at 1:30 p.m. at the Office of Administrative Law, Atlantic County Civil Courthouse, third floor, 1201 Bacharach Boulevard, Atlantic City, New Jersey.

On the scheduled date, the respondent failed to appear. Ten days passed from the scheduled hearing date, and during that period, the respondent did not contact the Office of Administrative Law to offer any explanation for the nonappearance. As a result, on October 28, 1988, Administrative Law Judge Stephen W. Thompson

concluded that the respondent no longer sought to defend this matter and issued an Initial Decision for the respondent's failure to appear at the scheduled prehearing conference in which he granted the Division's requested relief.

The Commission considered Judge Thompson's Initial Decision at its public meeting held on November 30, 1988. At that time, the respondent appeared at the meeting, completed another hearing request form, and requested another opportunity for a hearing. The Commission granted this request, and by order dated December 1, 1988, the Commission remanded the case to the Office of Administrative Law for a hearing on all issues. On December 1, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on January 3, 1989, 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 in the matter was held before me on June 22, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he had been convicted of a violation of N.J.S.A. 2C:20-3, theft by unlawful taking from his employer, the Sands Hotel and Casino.

B. Whether respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

A hearing was held on November 9, 1989, in the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. Prior to presenting evidence on the merits of the case, the Division moved to dismiss the case as the matter was moot and there was no longer any subject matter jurisdiction in the case. On April 22, 1985, the Division filed a complaint against the respondent's casino employee license no. 51306-21. On July 19, 1985, the Commission deferred action on the complaint until after resolution of the then pending criminal proceedings. Those proceedings resulted in the respondent's conviction later in 1985. Thereafter, the respondent briefly worked at various casinos. In May of 1987, the respondent failed to renew his casino employee license, and his license expired. He did not renew his license, nor make application to the Commission for the issuance of a new license. This case was originally transmitted to the Office of Administrative Law on

May 16, 1988. This was three years after the complaint had been filed and one year after the license had expired. As such, the Division argued that there no longer existed any subject matter jurisdiction in this case, there was no longer any case in controversy, and that the matter was moot. The Division therefore moved that the matter be dismissed without prejudice.

On November 16, 1989, I entered an Initial Decision granting the Division's motion and dismissed the matter without prejudice. The Commission considered my Initial Decision at its public meeting of January 10, 1990. At that meeting, the Division indicated that it had been unaware of N.J.A.C. 19:41-8.7 which permits the Commission to determine applications or qualifications for licensure or registration even if the matter becomes moot after the application was submitted. The Division, therefore, requested the matter be remanded for a hearing. By order dated January 22, 1990, the Commission rejected the Initial Decision and remanded the matter for a hearing.

A hearing was held on June 12, 1990, in the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

In June 1984, the respondent, Leonard Grate, became employed as as security officer at the Sands Hotel and Casino. On March 27, 1985, while employed as a security officer at the Sands, the respondent was arrested for stealing, from a change booth on the casino floor, several rolls of wrapped quarters and half-dollars totaling $100. The respondent told the investigating agent that he found the coins on the floor in the booth and that he did not take the coins from the cash drawer (P-8).

On March 27, 1985, the respondent was charged in Atlantic City Municipal Court with theft by unlawful taking in violation of N.J.S.A. 2C:20-3. On September 5, 1985, the respondent pleaded guilty to the charge and was sentenced to pay a $25 fine, a $25 Violent Crimes Compensation Board Penalty, and $25 in court costs (P-5).

The respondent denies committing the theft. He maintains that he purchased two rolls of quarters in order to do his laundry. The two rolls of quarters were in his jacket in a room near the casino floor. He denies wrongfully taking change from the change booth. He further maintains that he pleaded guilty on the advice of counsel.

His trial had been repeatedly postponed, and he was told that if he pleaded guilty, paid $75, and promised not to return to the Sands, that everything would be put behind him and he could return to work in the casino industry.

The respondent is 37 years old and resides in Atlantic City with his mother and two younger brothers. He is presently unemployed. In 1985 and 1986, he briefly held security positions at the Showboat, Tropicana and Caesars; however, he was terminated from these positions when information was raised concerning the Sands incident. Since 1986, he has been employed in a grocery store and as a part-time cook.

On February 13, 1986, the respondent was arrested and was charged in the Atlantic City Municipal Court with one count of possession of a controlled dangerous substance (marijuana) in violation of N.J.S.A. 24:21-20a(4), one count of possession of a controlled dangerous substance (marijuana) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1), and one count of possession of narcotic paraphernalia in violation of N.J.S.A. 24:21-47. On September 23, 1986, the respondent entered a plea of not guilty to all the charges. The charges were then referred to the county prosecutor for action. After reviewing the case, the county prosecutor elected not to seek an indictment, and returned the case to municipal court for disposition. On October 23, 1986, the respondent was found guilty of the possession of marijuana and possession of narcotic paraphernalia charges and the possession with the intent to distribute charge was dismissed. The respondent was granted a conditional discharge on the charges and was placed on probation for six months. The respondent satisfactorily completed his probationary period and the charges were dismissed.

Since 1986, the respondent has been very active in his community. He regularly assists senior citizens and senior citizen groups. He makes repairs, performs odd jobs, and runs errands for senior citizens in the community. He only receives money to pay for expenses; he does not accept any money for profit or if he did not incurr any expenses.

The Division did attempt to refute the respondent's testimony concerning the circumstances underlying the incident but did not attack his current good character, honesty and integrity. As such, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the former holder of a casino hotel employee license, he has a direct interest in the outcome

and a bias in these proceedings. However, during both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence, it appears that the respondent testified truthfully in substantial regard. However, there were a few inconsistencies. He denied the underlying misconduct and had no recollection of the drug paraphernalia charge.

FINDINGS OF FACT

1. On March 27, 1985, while employed as a security officer at the Sands Hotel and Casino, the respondent was arrested for stealing, from a change booth on the casino floor, several rolls of wrapped quarters and half-dollars totaling $100. He was thereafter charged in Atlantic City Municipal Court with theft by unlawful taking in violation of N.J.S.A. 2C:20-3.

2. On September 5, 1985, the respondent pleaded guilty to the charge and was sentenced to pay a $25 fine, a $25 Violent Crimes Compensation Board Penalty, and $25 in court costs.

3. The respondent is 37 years old and resides in Atlantic City with his mother and two younger brothers.

4. He is presently unemployed. In 1985 and 1986, he briefly held security positions at the Showboat, Tropicana and Caesars; however, he was terminated from these positions when information was raised concerning the Sands incident. Since 1986, he has been employed in a grocery store and as a part-time cook.

5. On February 13, 1986, the respondent was arrested and was charged in the Atlantic City Municipal Court with one count of possession of a controlled dangerous substance (marijuana) in violation of N.J.S.A. 24:21-20a(4), one count of possession of a controlled dangerous substance (marijuana) with the intent to distribute in violation of N.J.S.A. 24:21-19a(1), and one count of possession of narcotic paraphernalia in violation of N.J.S.A. 24:21-47.

6. On October 23, 1986, the respondent was found guilty of the possession of marijuana and possession of narcotic paraphernalia charges and the possession with the intent to distribute charge was dismissed. The respondent was granted a conditional discharge on the charges and was placed on probation for six months. The respondent satisfactorily completed his probationary period and the charges were dismissed.

7. Since 1986, the respondent has been very active in his community. He regularly assists senior citizens and senior citizen groups. He volunteers to make repairs, performs odd jobs, and runs errands for senior citizens in the community.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> ....
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> ....
>
> (2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing;

 N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residencey, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

e. 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.

. . . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the application has affirmatively demonstrated his rehabilitation. In determining whether the 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 of conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." N.J.S.A. 5:12-129(1) provides for the revocation of 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 contended that the respondent was convicted of N.J.S.A. 2C:20-3, theft by unlawful taking from the Sands Casino, which constitutes a violation of N.J.S.A. 5:12-86c(4) (now section 86c(2)), and that, accordingly, he is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(2)

Section 86c(4) of the Act (now section 86c(2)) 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, 10 N.J.A.R. 244 (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 254:

> 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,

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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 in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(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."

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif, den. 102 N.J. 352 (1985), the appellate division held that "inimical" means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contended that the respondent was convicted of a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, in an amount which makes the crime a disorderly persons offense. This offense is not listed as a disqualifier under section 86c(1), as such the Division asserted that this offense is a disqualifying offense under section 86c(4) (now section 86c(2)) as the offense was committed against the casino hotel.

N.J.S.A. 2C:20-3, Theft by unlawful taking provides in pertinent part:

> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

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The Division established that the respondent has been convicted of theft by unlawful taking in violation of N.J.S.A. 2C:20-3. The conviction resulted from the respondent's alleged theft from a change booth in the Sand's Casino Hotel of ten rolls of quarters and half-dollars totaling $100. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent was convicted of a violation of N.J.S.A. 2C:20-3. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b, the offense constitutes a disorderly persons offense.

In State of New Jersey, Dept. of Law and Public Safety, Division of Gaming Enforcement v. Michael P. Waters, OAL DKT. CCC 3933-86, (Jan. 7, 1987) decided by the Commission (June 12, 1987), the Commission stated at 23 that:

> A distinction must be drawn between the rehabilitation from a section 86(c)(1) or (3) disqualifying offense pursuant to sections 90(h) or 91(d) of the Act and rehabilitation as an aspect of the inimical analysis. In the former situation, disqualification is established once it is shown that the respondent committed an enumerated offense. The respondent is then afforded the opportunity to affirmatively demonstrate his rehabilitation from that disqualification. It is well established that, consistent with other affirmative licensing criteria, the respondent must prove his rehabilitation by clear and convincing evidence. Application of Richard Romanishin for a Casino Employee License, Docket No. 84-EA-85 (Commission order, May 23, 1985); Application of Chester R. Brathwaite for a Casino Employee License, Docket No. A-4252-82T3 (Unpublished opinion reversing Commission decision, January 23, 1984).
>
> However, unlike a section 86(c)(1) or (3) situation, disqualification pursuant to section 86(c)(4) is not established upon demonstrating that the respondent committed the offense in question. Such a determination can only be made after considering all the circumstances surrounding the offense: its nature, its remoteness, and the offender's conduct subsequent to the offense, i.e., essentially the same factors which bear upon rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Commission decision, December 27, 1985); State v. Theodore Williams, Docket No. 84-288 (Commission order, May 1, 1987).

The Commission concluded that if the Division establishes a case for the respondent's disqualification, it is "then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof), had shifted." [Id. at 3]

In the Davis case, the Commission stated at 313-314:

> 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 rehabilitation 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.

The Commission indicated that "it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis (and) . . . the inimical analysis is substantially similar to the concept of rehabilitation." The Commission concluded that:

> 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). [Id. at 314] [footnote omitted]

The eight specific criteria enumerated in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d to be evaluated when a determination of rehabilitation is to be made are:

1. The nature and duties of the licensee's position or 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 licensee or 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 applicant or registrant under their supervision.

In regard to the first criterion, Leonard Grate was a casino licensee and was employed as a security officer. As such, he did not have direct responsibilities for actual gaming activities but did come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, on one occasion while employed in the casino industry. Because the offense was committed against his casino employer, it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent was convicted of stealing $100 in coins from his casino employer while employed as a security officer. This is a position of trust, and as such the offense is very serious.

Fourth, the respondent's misconduct occurred on March 27, 1985, when it ceased.

Fifth, the respondent was 32 years old at the time of the first offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was not isolated in nature. He has committed other violations of the criminal laws. He received a conditional discharge in 1986 for possession of marijuana and drug paraphernalia.

Seventh, there are no social conditions which may have contributed to this offense.

Eighth, the respondent has been extremely active in his community during the last five years. He helps senior citizens by volunteering his time to perform odd jobs and to run errands. The respondent, however, presented virtually no evidence in his own behalf.

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) (now section 86c(2)).

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Grate 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 Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. (Id. at 296).

It is apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty an integrity. The misconduct did involve his licensed employment; however, during the last five years, the respondent has become a responsible member of his community. He regularly volunteers to assist senior citizens and is an asset to his community. An examination of the whole person clearly and convincingly established that Mr. Grate is now a person of good character, honesty and integrity.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** and that license no. 51306-21 which has not been renewed, be revoked.

It is further **ORDERED** that the respondent, Leonard Grate, is presently not qualified to hold a casino employee license because of his conviction of an offense which is inimical to the policies of the Casino Control Act.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 19, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

6/21/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 22 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Casino Control Commission computer print-out of casino employees who failed to renew their licenses in May 1987

P-2 Casino Control Commission letter, dated May 16, 1988

P-3 Casino Control Commission order, dated July 19, 1985

P-4 Casino Control Commission letter, dated April 23, 1985

P-5 Atlantic City Municipal Court Complaint and Judgment, dated September 5, 1985

P-6 Atlantic City Municipal Court Complaint and Judgment, dated October 23, 1986

P-7 Atlantic City Municipal Court Complaint and Judgment, dated October 23, 1986

P-8 New Jersey State Police Investigation Report, dated March 27, 1985

For the Respondent:

None

WITNESSES

For the Petitoner:

Leonard Grate, the respondent

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 90-14
OAL DOCKET NO. CCC 5720-89
ORDER NO. 90-28-11

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

Complainant, ORDER

v.

GREATE BAY HOTEL AND CASINO, INC.,
t/a SANDS HOTEL, CASINO AND COUNTRY CLUB

Respondent.

A hearing 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 exceptions having been filed; and a reply having been filed; and the Commission having considered the entire record of these proceedings at its public meetings of April 25, 1990, and July 11, 1990, and for the reasons stated on the record of the Commission's public meeting of July 11, 1990,

IT IS on this 15th day of November 1990, ORDERED that the initial decision is modified as follows:

1. To find that, in addition to the violations found by the ALJ, the respondent's conduct was in violation of N.J.S.A. 5:12-101(b), N.J.A.C. 19:45-1.24(a), -1.25(b), -1.26(a), -1.26(f), and 1.27(a)(6).

2. The ALJ's comment at p.18 of the initial decision that, "it appears likely that if the procedures had been submitted to the Commission and the Division they would have been approved..." is rejected.

IT IS FURTHER ORDERED that the initial decision as modified, is adopted and incorporated herein by reference; and

IT IS FURTHER ORDERED that Sands pay a total civil penalty in the amount of $246,000 to be apportioned as follows:

1. $76,000 for the internal controls violation under N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.30. ($25,000 for failure to submit the internal control procedures to the Commission and the Division for review and approval; and $51,000 for implementation of the procedures by accepting 17 checks).

2. $170,000, for the credit violations under N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.24(a), -1.25(b), -1.26(a), -1.26(f), and -1.27(a)(6) for accepting non-conforming checks for redemption and safekeeping deposit transactions.

IT IS FURTHER ORDERED that the civil penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5720-89
AGENCY DKT. NO. 90-14

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
GREATE BAY HOTEL AND CASINO,
INC. t/a THE SANDS HOTEL, CASINO
AND COUNTRY CLUB,
Respondent.

Wendy Alice Way, Deputy Attorney General, for the petitioner (Robert J DelTufo, Attorney General of New Jersey, attorney)

Frederick H. Kraus, Esq., Director of Legal Affairs, for the respondent

Record Closed: January 4, 1990 **Decided:** February 20, 1990

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

I - PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement, Department of Law and Public Safety (Division) with the Casino Control Commission (Commission) on July 7, 1989, seeking the imposition of an appropriate penalty for alleged violations and appropriate action to prevent any reoccurrence. The respondent, the Greate Bay Hotel and Casino, Inc. t/a the Sands Hotel, Casino and Country Club (Sands), requested an administrative hearing, and

the matter was transmitted to the Office of Administrative Law on August 3, 1989, to be heard 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.

During the telephone prehearing conference on September 28, 1989, the parties agreed that the issues in this matter are:

A. Count I

1. Whether the respondent's failure to submit the Custodial Check Clearing Account Procedures, the Custodial Funds Receipt and the Custodial Credit Check Clearing Form to the Commission and Division violated N.J.S.A. 5:12-99(a) and N.J.A.C. 19:45-1.3(a).

2. Whether the respondent's adoption and implementation of the Custodial Check Clearing Account Procedures and the respondent's use of the Custodial Funds Receipt and Custodial Credit Check Clearing Form, without first having said procedures and forms approved by the Commission violated N.J.S.A. 5:12-99(b) and N.J.A.C. 19:45-1.3(b).

B. Count II

1. Whether the respondent altered its internal controls without Commission approval in violation of N.J.S.A. 5:12-99(b) each time that the Custodial Check Clearing Account Procedures were revised and implemented as revised.

2. Whether the respondent violated N.J.A.C. 19:45-1.3(c) by failing to submit the revised Custodial Check Clearing Account Procedures to the Commission and Division.

C. Count III

1. Whether the respondent violated N.J.A.C. 19:45-1.26(a) and (f) and N.J.A.C. 19:45-1.27(a)(6) in the methodology used to process the 12 custodial checks listed in the Division's complaint.

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2. Whether the respondent violated N.J.A.C. 19:45-1.24(a) in the methodology used to process the 5 custodial checks listed in the Division's complaint.

3. Whether the respondent violated N.J.A.C. 19:45-1.24(a) and/or N.J.A.C. 19:45-1.26(a) and (f) and N.J.A.C. 19:45-1.27(a)(6) in the methodology used to process one of the custodial checks[1] listed in the Division's complaint.

4. Whether the respondent violated N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(b) in the methodology used to process the 18 custodial checks[2] listed in the Division's complaint.

D. Count IV

1. Whether or not the respondent violated N.J.A.C. 19:45-1.14 and 1.15 by implementing the Custodial Check Clearing Account Procedures.

There was no hearing in the matter, rather, the parties submitted stipulated facts and documents as well as briefs. The record closed on January 4, 1990, the day on which the parties presented their oral closing statements before the undersigned at the Office of Administrative Law in Atlantic City.

II - FINDINGS OF FACT

The parties stipulated to the following facts:

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1 Count III of the Division's complaint related to 18 custodial checks reviewed by the Division during its investigation of this matter. During the discussion between the parties which resulted in the stipulation of facts, the Division agreed to withdraw its allegations as to the one custodial check which is the subject of this sub-issue.

2 Count III of the Division's complaint related to 18 custodial checks reviewed by the Division during its investigation of this matter. During the discussion between the parties which resulted in the stipulation of facts, the Division agreed to withdraw its allegations as to one of the custodial checks, identified in Count III, para 37, item #17. The 17 custodial checks in issue consist of 12 checks submitted for redemption, 2 checks submitted for safekeeping and 3 checks submitted for redemption and safekeeping.

1. The Division is established pursuant to Section 55 of the New Jersey Casino Control Act ("the Act"), N.J.S.A. 5:12-55, and has such powers and duties as are set forth in Sections 76 through 79, inclusive, of the Act, N.J.S.A. 5:12-76 to 79.

2. The Sands is a corporation organized and existing under the laws of the State of New Jersey and maintains a principal place of business located at Indiana Avenue and Brighton Park, Atlantic City, New Jersey, 08401.

3. The Sands is now the holder of a plenary casino license issued to it by the Casino Control Commission ("the Commission") authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder ("the License"). The License was issued to the Sands effective May 7, 1982, and was last renewed on May 7, 1988, and the Sands has been and is now operating a casino hotel pursuant to the License.

4. The Sands is the holder of, and operates pursuant to, a Certificate of Operation effective May 7, 1981, which, due to a change in ownership, replaced the original Certificate of Operation which was issued on August 12, 1980, at which time the Sands was the holder of a temporary casino permit effective August 7, 1980, and the Sands has been and is now operating a casino hotel pursuant to the Certificate of Operation. The Certificate of Operation entitles the Sands to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

5. Effective March 1, 1986, the Sands first adopted and implemented procedures under which the Sands received custody of certain checks from patrons of the Sands ("Custodial Checks").

6. The Sands received custody of Custodial Checks for two difference reasons. First, certain patrons, in seeking to substitute counter checks in accordance with N.J.A.C. 19:45-

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1.26, presented personal or business checks at the casino cage but the personal or business checks could not be immediately accepted for substitution because the accounts on which such items had been drawn had not been verified in accordance with N.J.A.C. 19:45-1.27(c)(4) ("Unverified Checks"). Because the Sands could not immediately accept Unverified Checks in substitution of counter checks, the Sands decided to receive custody of Unverified Checks and to maintain Unverified Checks on file within the casino cage while the Credit Department performed the verification of the account on which the Unverified Checks had been drawn in the manner required by N.J.A.C. 19:45-1.27(c)(4) ("Custodial Checks for Verification"). Once the account on which the Custodial Checks for Verification had been drawn had been verified by the Credit Department in the manner required by N.J.A.C. 19:45-1.27(c)(4), the Custodial Check for Verification was then accepted in substitution of the patron's counter check and the substitution transaction was processed in accordance with the Sands approved internal controls. Second, certain patrons, in seeking to redeem counter checks in accordance with N.J.A.C. 19:45-1.26, presented Unverified Checks, bank checks, or other third party checks (collectively "Non-conforming Items") at the casino cage that could not be immediately accepted for redemption in accordance with N.J.A.C. 19:45-1.26 because the Non-conforming Items did not satisfy either the definition of a cash equivalent set forth at N.J.A.C. 19:45-1.1, or the requirements applicable to a check accepted in redemption of a counter check set forth at N.J.A.C. 19:45-1.27(a)(6). Because the Sands could not immediately accept a Non-conforming Item in redemption of a counter check, the Sands decided to receive custody of a Non-conforming Item solely for the purpose of depositing the Non-conforming Item into the Sands account with Midlantic National Bank/South, awaiting confirmation from the bank upon which the Non-conforming Item had been drawn that the Non-conforming item had actually cleared, and, only when the Non-conforming Item had been thus converted into cleared funds, applying the cleared funds in redemption of a counter check or to a safekeeping

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deposit, as requested by the presenting patron, in accordance with the Sands approved internal controls ("Custodial Checks for Clearing").

7. The procedures applicable to the manual processing of Custodial checks for Verification ("the Manual Procedures for Custodial Checks for Verification") were attached to and described in a memorandum from Timothy A. Ebling dated February 28, 1986 ("the Ebling Memorandum"). Copies of the Ebling Memorandum and the Manual Procedures for Custodial Checks for Verification are attached as Exhibit "A."

8. The Ebling Memorandum stated in the first paragraph as follows: "Please keep in mind that this system is totally manual at this date. When the data system is available, you will receive a copy of those procedures."

9. The procedures applicable to the processing of Custodial Checks for Verification were changed or altered to include procedures designed for use with the Sands electronic data processing ("EDP") system within two weeks following the adoption of the Manual Procedures for Custodial Checks for Verification by the adoption and implementation of documents entitled: "Procedure for Redemption by Personal or Business Check at the Front Window and Procedure for Accepting and Disbursing Custodial Checks in the Main Bank" (collectively "the EDP Procedures for Custodial Checks for Verification"). A copy of the EDP Procedures for Custodial Checks for Verification are [sic] attached as Exhibit "B."

10. A computer generated receipt was issued to a patron when the Sands took custody of a Custodial Check for Verification ("a Custodial Check Receipt"). A copy of a Custodial Check Receipt is attached as Exhibit "C."

11. The procedures applicable to Custodial Checks were altered or amended to include procedures applicable to Custodial Checks for Clearing on or about March 25, 1986 ("the Procedures for Custodial Checks for Clearing") and were attached to and

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described in a memorandum from John Ciullo dated March 25, 1986 ("the Ciullo Memorandum"). Copies of the Procedures for Custodial Checks for Clearing and the Ciullo Memorandum are attached as Exhibit "D."

12. A Custodial Check Receipt, as defined in paragraph 10 above, was issued to a patron when the Sands took custody of a Custodial Check for Clearing.

13. The Sands used a form entitled: "Custodial Credit Check Cleared" ("Custodial Check Clearing Form") as part of the Procedures for Custodial Checks for Clearing. A copy of a Custodial Check Clearing Form is attached as Exhibit "E."

14. A memorandum was written by John Ciullo, as an explanatory supplement to the Procedures for Custodial Checks for Clearing, dated April 15, 1986. Memoranda were written by John Ciullo, as explanatory supplements to the EDP Procedures for Custodial Checks for Verification, dated April 28, 1986 and March 6, 1987 (collectively "the 3 Ciullo Memoranda"). Copies of the 3 Ciullo Memoranda are attached as Exhibit "F."

15. Neither the Manual Procedures for Custodial Checks for Verification, as defined in paragraph 7 above, the EDP Procedures for Custodial Checks for Verification, as defined in paragraph 9 above, the Custodial Check Receipt, as defined in paragraph 10 above, the Custodial Check Clearing Form, as defined in paragraph 13 above, the Procedures for Custodial Checks for Clearing, as defined in paragraph 11 above, nor the 3 Ciullo Memoranda, as defined by paragraph 14 above, were submitted by the Sands to the Commission for review and approval pursuant to N.J.S.A. 5:12-99. However, the Sands contends that it had no obligation to submit such documents to the Commission for review and approval pursuant to N.J.S.A. 5:12-99.

16. The Sands obtained custody of seventeen (17) Non-conforming Items on the dates and for the patrons identified in item

numbers 1 through 16 and 18 of paragraph 37 of the Division Complaint and deposited the seventeen (17) Non-conforming Items into the Sands account with Midlantic National Bank/South, awaited clearance of the seventeen (17) Non-conforming Items, and applied the resulting cleared funds to a redemption transaction and/or to a safekeeping deposit, as requested by the patrons in question, in accordance with the Sands approved internal controls.

17. As part of the investigation performed by the Division, the Division obtained copies of documents prepared and maintained by the Sands as records in the ordinary course of business relating to the transactions described in paragraph 16 above. Copies of such documents are attached as Exhibit "G."

18. Copies of the Internal Controls submitted by the Sands, reviewed by the Division, and approved by the Commission related to the Sands Casino Cage Operations pursuant to N.J.S.A. 5:12-99 and N.J.A.C. 19:45 et seq. and which were in effect at all times referenced herein (i.e., March, 1986 through and including July, 1989) are attached as Exhibit "H."

19. The Division conducted an investigation into the subject of Custodial Checks that included, inter alia, sworn interviews of John Osborne, Casino Controller, on December 2, 1988 and Timothy A. Ebling, Director, Corporate Accounting, on December 2, 1988. Copies of such sworn statements are attached as Exhibit "I."

20. The Sands was not advised by any representative of the Division during the course of the investigation of the Division that the conduct of the Sands relating to the subject matter of the Custodial Checks violated the Casino Control Act, N.J.S.A. 5:12-1 et seq. ("the Act") or the regulations promulgated pursuant to the Act. However, the Division's position is that it has no obligation to advise any licensee of any violative conduct under investigation by the Division.

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21. On or about July 14, 1989, after receipt of the Division Complaint in this matter, Frederick H. Kraus, Director, Legal Affairs, telephoned Timothy A. Ebling, Director, Corporate Accounting, advised Mr. Ebling of the receipt of the Division Complaint and of the need to discontinue taking custody of Custodial Checks, and telephoned Wendy Way, Deputy Attorney General, to acknowledge receipt of the Division Complaint and to advise Ms. Way of the decision of the Sands to discontinue taking custody of Custodial Checks without prejudice to the Sands' position that the Sands' practice of taking custody of Custodial Checks was lawful. Following the telephone call from Mr. Kraus, Mr. Ebling took the necessary steps to implement the decision to discontinue taking custody of Custodial Checks. Attached as Exhibit "J" is a certification of Timothy A. Ebling certifying the truth of the statement in the preceding sentence.

III - POSITIONS OF THE PARTIES AND CONCLUSIONS OF LAW

A. Alleged Violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3

In her oral argument as well as in her legal briefs, Deputy Attorney General Wendy Alice Way, on behalf of the petitioner, argued that the facts clearly show that:

(1) The respondent failed to submit the Custodial Check Clearing Account Procedures, the Custodial Funds Receipt and the Custodial Credit Check Clearing Form to the Commission and the Division for review and approval as required by N.J.S.A. 5:12-99(a) and N.J.A.C. 19:45-1.3(a).

(2) The respondent adopted, implemented and used said Custodial Check Clearing Account Procedures, the Custodial Funds Receipt and the Custodial Credit Check Clearing Form without first having obtained the approval of the Commission, a violation of N.J.S.A. 5:12-99(b) and N.J.A.C. 19:45-1.3(b).

(3) The respondent violated N.J.S.A. 5:12-99(b) each time that the Custodial Check Clearing Account Procedures were revised and supplemented.

(4) The respondent violated N.J.A.C. 19:45-1.3(c) by failing to submit the revised Custodial Check Clearing Account Procedures to the Commission and the Division for review and approval.

Although not specifically listed in N.J.S.A. 5:12-99(a), Ms. Way argued that the procedures, receipt and form in issue affect gambling operations and therefore are the type of internal controls that require the Commission's approval. Ms. Way stated that the need for the monitoring and control of the casinos' systems of internal financial controls was recognized in the Report and Recommendations on Casino Gaming, dated April 1977, submitted by the State Commission of Investigation, and in the Second Interim Report, dated February 17, 1977, submitted by the Governor's Staff Policy Group on Casino Gambling.

Ms. Way noted that the casino statute requires such monitoring and control, and specifically that N.J.S.A. 5:12-99(a), in part, provides:

> Each casino licensee shall submit to the commission a description of its system of internal procedures and administrative and accounting controls. Such submission shall be made at least 120 days before gaming operations are to commence or at least 90 days before changes in previously submitted control plans are to become effective, unless otherwise directed by the commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the casino, including, but not limited to:
>
> (1) Accounting controls, including the standardization of forms and definition of terms to be utilized in the gaming operations;
>
> (2) Procedures, forms, and, where appropriate, formulas covering the calculation of hold percentages, revenue drop, expense and overhead schedules, complimentary services, junkets, cash equivalent transactions, salary structure and personnel practices;
>
> . . .
>
> (4) Procedures within the cashier's cage for the receipt, storage and disbursal of chips, cash, and other cash equivalents used in gaming; the cashing of checks; the redemption of chips and other cash equivalents used in gaming; the pay-off of jackpots; and the recording of transactions pertaining to gaming operations;
>
> . . . .

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(9) Procedures for the security, storage and recordation of chips and other cash equivalents utilized in the gaming operation;

. . . .

(13) Procedures for the cashing and recordation of checks exchanged by casino patrons;

. . . .

See also, N.J.A.C. 19:45-1.3. Additionally, Ms. Way argued that recent case law has consistently recognized that N.J.S.A. 5:12-99 should be given a broad interpretation in order to achieve the goals of the statute. State v. Boardwalk Regency Corp. & Haverstick, OAL DKT. CCC 578-86 (June 4, 1987), adopted by Comm., Sept. 10, 1987; State v. Boardwalk Regency Corp., OAL DKT. CCC 2480-87 and 8472-87 (Sept. 12, 1988), modified by Comm., Nov. 30, 1988; Playboy - Elsinore Assocs. v. Strauss, 189 N.J. Super. 185 (Law Div. 1983); State v. Boardwalk Regency Corp., OAL DKT. CCC 3916-80, (May 18, 1981), adopted by Comm. July 17, 1981. Based on the provisions of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3, Ms. Way argued that the Sands should have submitted the procedures, receipt and form in issue to the Commission and the Division for review and approval. Further, she argued that the Commission's review acts as a safeguard to prevent the use of procedures that do not conform with the Casino Control Act, so that the non-submission divests the Commission of its legislative mandate to review as well as denies the respondent the statutory safeguard against the adoption of improper procedures. Also, Ms. Way argued that the use of the procedures without the Commission's approval is a serious violation even if it was not intentionally done and there was no harm by the actions, State v. Resort's International Hotel, Inc., Comm. decision, Oct. 4, 1983, aff'd, (N.J. App. Div., Feb. 26, 1985, A838-83T2) (unreported).

Frederick H. Kraus, Esq., on behalf of the Sands, argued that the legislative history relating to N.J.S.A. 5:12-99 clearly establishes that this provision was not intended to cover all internal controls regardless of the subject matter (R-1). If this was the intent of the legislation, Mr. Kraus argued that N.J.S.A. 5:12-99 would have simply provided that all internal controls had to be submitted to the Commission for approval rather than listing 17 subsections which identify the procedures that need approval.

Mr. Kraus stated that the Sands developed the procedures since its patrons were confused as to why the Sands would not accept the type of checks in issue. This procedure was reviewed by in-house counsel who advised the Sands that the Commission's approval was not necessary pursuant to N.J.S.A. 5:12-99, since the

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checks were taken for custody and were not used for redemption or safe-keeping until they cleared the bank.

Further, Mr. Kraus argued that the broad interpretation of N.J.S.A. 5:12-99 advocated by Ms. Way was not justified by either the legislative history or the language in the statute. Mr. Kraus argued that the cases cited by Ms. Way are not relevant since the provisions of N.J.S.A. 5:12-99 did not constitute the main issue in these cases.

Ms. Way disagreed and argued that the list in N.J.S.A. 5:12-99 was intended to be a guideline and this provision was intended to cover procedures not specifically listed in the statute. Additionally, Ms. Way argued that when the Sands took the checks in issue, it "accepted" them and therefore the procedures were subject to the Commission's approval and she disagreed with Mr. Kraus' argument that the Sands only took custody of the checks.

Having considered the arguments of the parties, I **CONCLUDE** that the procedures, receipt and form in issue should have been submitted to the Commission and Division for review and approval pursuant to N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. The provisions of N.J.S.A. 5:12-99 clearly indicate that the listing of procedures needing approval is not all-inclusive but only reflects examples of the type of procedures which need the Commission's approval. Since the acceptance of the checks in issue was the first step in a procedure intended to affect the patrons' gambling credit, I **CONCLUDE** that the procedures in issue directly relate to gaming operations and as such should have been submitted to the Commission and Division for review and approval.

B. Alleged Violations of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(b)

Ms. Way argued that the Sands adopted the procedures, receipt and form in issue in order to circumvent the statutory and regulatory requirements regarding the processing of checks contained in N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(b) She argued that there is no statutory or regulatory authority to permit the receipt and deposit of non-conforming checks while waiting for the instruments to clear the bank. Further, she argued that the non-conforming checks in issue cannot be considered to be cash equivalent as defined in N.J.A.C. 19:45-1.1.

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Mr. Kraus disagreed and argued that N.J.S.A. 5:12-101(b) is clearly limited to checks accepted to enable a player to immediately gamble and that N.J.A.C. 19:45-1.25(b) only restates the provision of this statute. Since it is the Sands' position that it only took custody of the checks, Mr. Kraus argued that this statute and regulation do not apply to the checks in issue since the players who presented the checks did not receive immediate credit.

Based on my review of the arguments of the parties and the law, I agree with Mr. Kraus' arguments and I **CONCLUDE** that the respondent was not in violation of the provisions of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(b).

C. Alleged Violations of N.J.A.C. 19:45-1.26(a) and (f) and N.J.A.C. 19:45-1.27(a)(6)

It is Ms. Way's position that the acceptance of 15 of the checks in issue as part of the redemption transaction violated N.J.A.C. 19:45-1.26(a) and (f) and N.J.A.C. 19:45-1.27(a)(6), and in support of her position, she cited the decision in In the Matter of the Petition of Adamar of N.J. Inc., Comm. decision, Dec. 1, 1986. She argued that the regulations clearly require contemporaneous payment for the surrender of a patron's counter check and prescribe the type of instruments that can be accepted as payment.

Mr. Kraus disagreed and argued that the redemption transaction did not take place when the Sands took custody of the custodial checks, so there was no violation of N.J.A.C. 19:45-1.26. According to Mr. Kraus, there was no redemption since the Sands did not exchange the counter check for the custodial check and also since by taking custody of the checks in issue the Sands did not affect the patrons' remaining credit limit. According to Mr. Kraus, the redemption took place only after the non-conforming checks cleared the bank. In addition, Mr. Kraus argued that there is nothing in N.J.A.C. 19:45-1.26 to prevent a casino from taking "custody" of a check and that this regulation was not intended to contain an exhaustive list of the forms of equivalent value that can be given to redeem a counter check.

Mr. Kraus admitted that the checks in issue did not satisfy the requirements of N.J.S.A. 19:45-1.27(a)(6), and therefore could not be used to immediately redeem a counter check pursuant to N.J.A.C. 19:45-1.26. However, he argued there was no violation of N.J.A.C. 19:45-1.27 since there was no redemption until the checks cleared the bank.

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After my review of the arguments and the provisions of the regulations, I agree with Mr. Kraus' arguments, and I **CONCLUDE** that the respondent did not violate the provisions of N.J.A.C. 19:45-1.26(a) and (f) and N.J.A.C. 19:45-1.27(a)(6).

D. Alleged Violations of N.J.A.C. 19:45-1.24(a)

Ms. Way argued that the five custodial checks that were accepted as safekeeping deposit transactions violated the provisions of N.J.A.C. 19:45-1.24(a), since the checks in issue did not meet the regulatory requirements for "cash equivalents."

Mr. Kraus argued that the Sands had not violated N.J.A.C. 19:45-1.24(a) by taking custody of the five custodial checks since the patrons did not get any additional credit when the Sands received the checks. Mr. Kraus agreed with Ms. Way's argument that the checks in issue did not meet the definition of "cash equivalents," and he argued that for that reason, the Sands only took custody and the safekeeping deposit did not take place until after the checks cleared the bank.

Based on my review of the arguments and the provisions of the regulation, I agree with Mr. Kraus' arguments and I **CONCLUDE** that the respondent did not violate the provisions of N.J.A.C. 19:45-1.24(a).

E. Alleged Violations of N.J.A.C. 19:45-1.14 and 19:45-1.15

Ms. Way argued that the Sands violated N.J.A.C. 19:45-1.14 and 19:45-1.15 by adopting procedures which provided for certain functions to be handled by the cage cashier in the cage which are not included in the authorized list of cage and cage cashier functions.

Mr. Kraus disagreed and argued that neither of these regulations contain an all-inclusive list of functions that may be performed in the cashier cage. Further, he argued that if the Sands had allowed the checks in issue to be accepted elsewhere, the Division would have objected and would have taken the position that the checks should have been accepted at the cage.

Based on my review of the arguments and the language of the regulations, I agree with Mr. Kraus, and I **CONCLUDE** that the Sands did not violate the provisions of N.J.A.C. 19:45-1.14 and 19:45-1.15.

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F. Proposed Penalty

To determine the penalty to be imposed pursuant to N.J.S.A. 5:12-129 and 5:12-130 for the alleged violations, Ms. Way argued that the following factors should be taken into consideration:

(1) The seriousness of the violations committed which involve the sensitive area of casino credit.

(2) The potential risk to the public and to casino operations occasioned by the use of unapproved internal controls and administrative accounting procedures regarding the acceptance of non-conforming instruments.

(3) The existence of the non-compliance for over a three-year period.

(4) There are no justifiable reasons for the violations.

(5) The existence of a prior similar violation committed by the Sands. State v. Greate Bay Hotel and Casino, Inc. et al , 11 N.J.A.R. 151 (1984) (Hong Kong case). In that matter, the Commission found that the respondent accepted 26 non-conforming instruments in violation of N.J.S.A. 5:12-99, 5:12-101(b) and N.J.A.C. 19:45-1.24(a), and imposed a monetary penalty of $78,000.00 ($3,000.00 per violation). It is Ms. Way's position that this matter involves similar violations even though in the Hong Kong case the checks were accepted in a conference room rather than at the cage and the patrons were able to immediately use the money rather than waiting for the checks to clear the bank.

Based on the violations in this matter, Ms. Way argued that the respondent should be assessed a monetary penalty of between $128,000.00 and $187,000.00. The penalty proposed by Ms. Way consists of:

(1) For respondent's failure to submit the procedures, receipt and form in issue to the Commission and Division, in violation of N.J.S.A. 5:12-99(a) and N.J.A.C. 1:45.1.3(a), a penalty ranging between $20,000.00 and $25,000.00.

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(2) For the respondent's adoption and implementation of procedures and the use of a receipt and form without the Commission's approval, in violation of N.J.S.A. 5:12-99(b) and N.J.A.C. 19:45-1.3(b),a penalty ranging between $20,000.00 and $25, 000.00.

(3) For respondent's alterations of its procedures without Commission's approval, in violation of N.J.S.A. 5:12-99(b), a penalty ranging between $10,000.00 and $15,000.00.

(4) For respondent's failure to submit the revised procedures for Commission's approval, in violation of N.J.A.C. 19:45-1.3(c), a penalty ranging between $5,000.00 and $10,000.00.

(5) For respondent's acceptance of 17 custodial checks,[3] a violation of N.J.S.A. 5:12-101(b) and N.J.A.C. 19:45-1.25(b), a range from $4,000.00 to $6,000.00 per check for a total penalty ranging between $68,000.00 and $102,000.00. Said violations are compounded by the fact that the Sands processed 15[4] of these checks as patron redemption transactions in violation of N.J.A.C. 19:45-1.26(a) and (f) and 19:45-1.27(a)(6) and processed 5[5] of said checks as safekeeping deposit transactions in violation of N.J.A.C. 19:45-1.24(a).

(6) For respondent's implementation of procedures pertaining to cage and cage cashier functions, in violation of N.J.A.C. 19:45-1.14 and 19:45-1.15, a penalty between $5,000.00 and $10,000.00.

Ms. Way argued that the proposed monetary penalty range is reasonable based on the facts and is consistent with the past practices of the Commission. In

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3 Count III of the Division's complaint related to 18 custodial checks reviewed by the Division during its investigation of this matter. During the discussion between the parties which resulted in the stipulation of facts, the Division agreed to withdraw its allegations as to one of the custodial checks, identified in Count III, para 37, item #17.

4 The 15 checks include the 12 checks accepted just for redemption as well as the 3 checks submitted for both redemption and safekeeping.

5 The 5 checks include the 2 checks accepted just for safekeeping as well as the 3 checks sumbitted for obth redemption and safekeeping.

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support of her position, she cited the Hong Kong case, as a prior similar violation by the Sands (assessment of a penalty of $3,000.00 for each of twenty-six non-conforming checks). See, also, State v. Playboy-Elsinore Associates, et al, 11 N.J.A.R. 192 (1984) (assessment of a penalty of $4,000.00 for each of thirteen non-conforming checks); State v. GNOC, OAL DKT. CCC 162-88 (February 16, 1989), adpted by Comm., April 17, 1989 (assessment of a penalty of $50,000.00 for implementing revised clearing dates for checks without the Commission's approval); and State v. Harrah's Associates, t/a Trump Casino Hotel, OAL DKT. CCC 524-87 (August 9, 1988), adopted by Comm., December 19, 1988 (assessment of a penalty which included $100,000.00 for off-site redemptions, $10,000.00 for improperly establishing a patron's cash deposit account; $10,000.00 for failing to submit and obtain approval for the redemption procedures; and $20,000.00 for allowing a collection agent to perform the functions of a general cashier).

Mr. Kraus argued that the Sands did not violate any of the statutes and/or regulations cited in the complaint; however, he argued that if the respondent is determined to have violated any of the statutes and/or regulations, only a nominal monetary fine should be imposed. According to Mr. Kraus, the procedures, receipt and form in issue did not present any risk to the public or the integrity of gaming operations, and the Sands' action was not an intentional violation of the law. Mr. Kraus argued that the Sands acted in good faith after it sought the advice of counsel. In additon, Mr. Kraus stated that the Division took no action when it initially found out about the procedures in issue and he argued that this meant the Division did not consider this matter to involve serious violations of the Casino Control Act. Mr. Kraus stated when the Sands found out about the Division's positon regarding the procedures, receipt and form in issue, it immediately discontinued taking custody of any such checks.

Also, Mr. Kraus disputed the Division's representation that this matter constituted a second violation and argued that this matter is clearly distinguishable from the Hong Kong case. In the Hong Kong case, the patrons got immediate credit which could be used for gambling and the transactions did not take place in the cage. According to Mr. Kraus, the fact that the procedures in issue required these checks to be accepted in the cage is further evidence that the Sands thought the procedure was consistent with the law. Also, Mr. Kraus argued that the required use of the cage is a mitigating factor since it is the appropriate place for such action, not an aggravating factor as argued by Ms. Way.

Ms. Way stated that the Division did not consider the fact that the transfer took place in the cage to be an aggravating factor as to the amount of penalties for taking the checks in issue, but that the Division considers this use of the cage to be separate violations.

IV - Disposition

Based on my understanding of this matter, the prime objection of the Division is not the substance of the procedures developed by the Sands but the fact that the procedures, the form and the receipt, and amendments thereto, were not submitted to the Commission and the Division for review and approval before they were used. From the facts in the record, it appears likely that if the procedures had been submitted to the Commission and the Division, they would have been approved.

Although, I have concluded that the procedures, the form and the receipt should have been submitted to the Commission and the Division pursuant to N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3, I recognize that the Sands did not think that it needed the prior approval of the Commission. For that reason, the facts in this matter are clearly distinguishable from those in the Hong Kong case.

Based on the record, I **CONCLUDE** that the Sands should pay a penalty for its violations of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3, and I **CONCLUDE** that the penalty should be:

(1) $25,000 for the respondent's failure to submit the procedures, form and receipt to the Commission and Division for review and approval, including the amendments to said procedures, in violation of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3, and

(2) $51,000 for the implementation of said procedures, and the use of the procedures, form and receipt without the prior approval of the Commission, specifically the acceptance of 17 custodial checks in issue ($3000 per check).

Since the Sands has ceased taking the types of checks in issue, there is no need for any other relief. As noted during the oral argument, the Sands can at its option submit the procedures, form and receipt to the Commission and the Division for review if it wishes in the future to resume taking such checks.

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Therefore, I ORDER the Sands to pay a total penalty of **$76,000.00.**

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

February 20, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

2/20/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 22 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

caj

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EXHIBITS ADMITTED INTO EVIDENCE:

Joint Exhibits:

J-1 Factual Stipulation signed by the parties in November 1989

J-2 Memorandum from Timothy A. Ebling, Assistant Director of Corporate Accounting, to Steve Hann, Credit Director, dated February 28, 1986, with attachments

J-3 The procedure for redemption by personal or business check and the procedure for disbursing custodial checks in the main bank

J-4 A computer generated receipt issued by Sands for a custodial check for verification

J-5 Memoranda from John Ciullo to all cage supervisors, assistants and head cashiers, dated March 25, 1986, and a copy of the amended procedures for custodial credit checks

J-6 The Sands' form entitled Custodial Credit Check Cleared

J-7 Memoranda from John Ciullo regarding custodial credit checks, dated April 15, 1986, April 28, 1986 and March 6, 1987

J-8 Copies of the Sands' records relating to the 17 check transactions in issue

J-9 Copies of the Sands' internal control procedures relating to cage operations, approved by the Commission, in effect during the time period in issue

J-10 Sworn interviews of John Osborne, Manager of Casino Accounting, and Timothy A. Ebling, Director of Corporate Accounting, both on December 2, 1988

J-11 Affidavit of Timothy A. Ebling, Director of Corporate Accounting, dated November 21, 1989

For the Petitioner:

None

For the Respondent:

R-1 Legislative history regarding N.J.S.A. 5:12-99, as prepared by the respondent

600

WITNESSES:

For the Petitioner:

None

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 90-M-3
OAL DOCKET NOS. CCC 3018-89;
3019-89; 9257-89
ORDER NO. 90-47-5

GREATE BAY HOTEL & CASINO, INC. t/a SANDS,
AND RESORTS INTERNATIONAL HOTEL, INC.

Petitioners,

v. ORDER

STATE OF NEW JERSEY, CASINO CONTROL COMMISSION,

Respondent.

A hearing 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 28, 1990,

IT IS on this 10th day of December 1990, ORDERED that the initial decision is modified as follows:

(1) To conclude that the staff of the Commission's Audit Unit was authorized by the Casino Control Commission to conduct the audits in question; and

(2) To conclude that it is not necessary to reach the issue of whether N.J.S.A. 5:12-68 applies to bar the Commission from asserting additional tax liability against the petitioners; and

IT IS FURTHER ORDERED that the assessments for gross revenue tax deficiencies against Greate Bay Hotel & Casino,

Inc. for 1982, 1983 and 1985, and against Resorts International Hotel, Inc. for 1979, 1980, 1983 and 1988, are dismissed substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS.

CCC 3018-89

CCC 3019-89

CCC 9257-89

AGENCY DKT. NOS. -- 90-M-3

GREATE BAY HOTEL
AND CASINO, INC. t/a
SANDS,

and

RESORTS INTERNATIONAL
HOTEL, INC.,

Petitioners,

v.

STATE OF NEW JERSEY,
CASINO CONTROL COMMISSION,

Respondent.

Roberto Rivera-Soto, Esq., Vice-President and Corporate Counsel, for petitioner Sands

Jeffrey Light, Esq., for petitioner Resorts (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

James Schwerin, Esq., Senior Assistant Counsel for respondent Casino Control Commission

Record Closed: June 13, 1990 Decided: August 29, 1990

BEFORE EDGAR R. HOLMES, ALJ:

Casinos are licensed and regulated in New Jersey pursuant to the Casino Control Act (Act). N.J.S.A. 5:12-1 et seq. Section 144 of the Act imposes a gross revenue tax upon casinos. Section 149 of the Act formerly provided for the State Treasurer to audit casinos for tax purposes. In 1987, Section 149 was amended to substitute the Casino Control Commission for the State Treasurer. Subsequent to the amendment, Commission staff audited and then assessed the petitioners, alleging that an additional gross revenue tax over and above what the casinos had already reported and paid, was due and owing. The petitioners requested a hearing and the matters were transmitted to the Office of Administrative Law (OAL) to be heard as contested cases pursuant to N.J.S.A. 52:14F-1 et seq.

The matter transmitted under docket number 3018-89 is an audit of Resorts for the period January 1, 1979 to January 2, 1983 and the period January 1, 1983 to December 31, 1983. The matter transmitted under docket number 3019-89 is an audit of the Sands for the period 1982 through 1985. The matter transmitted under docket number 9257-89 is an audit of Resorts for 1988. These matters were consolidated for plenary hearing on March 6, 1989. The Order of Consolidation mistakenly included a matter transmitted under docket number 980-90, an audit of the Sands revenues for 1988. At the plenary hearing, this matter was continued without date.

An amended prehearing order was issued on August 25, 1989 which identified the issues to be determined at a plenary hearing as follows:

A. Whether the methodology used by the Commission in performing the gross revenue audits for Resorts International for the years 1979, 1980 and 1983 was appropriate?

B. Whether the methodology used by the Commission in performing the gross revenue audits for Greate Bay for the years 1982, 1983 and 1985 was appropriate?

C. Whether the aforesaid methodology, if appropriate, produced an accurate tax calculation for each of the enumerated years?

D. Whether the interest calculated to be due and owing is accurate?

E. Whether the audits issued to petitioners were authorized by the Commission prior to issuance?

F. Whether the respondent is time barred from asserting petitioners additional tax liability or any portion thereof?

The matter of the Resorts audit for 1988, docket number 9257-89, should have appeared in issue A, and A is hereby amended to include 1988.

On March 29, 1990, an Order denying Motions for Summary Judgment was entered.

On June 13, 1990, after 6 days of plenary hearing, the record closed.

The Casino Control Commission, at the request of the undersigned, extended the time within which to file an initial decision.

If accounting is the art of organizing and presenting financial data, then auditing is a form of criticism. Unlike the rules governing art and art criticism however, the rules governing accounting and auditing functions are "generally accepted." This case involves an application of the generally accepted rules governing auditing; whether an assumption made by the Commission staff in designing a portion of the gross revenue tax audit was contemplated by, or permissible under, these rules, or whether it was not. This is the primary issue, the rest are fall back positions.

A casino's gross revenue upon which the tax in question is calculated is the change in its net assets as a result of gaming transactions. These changes reflect the win or loss at the gaming tables.

A typical gaming table has a box affixed to it called a "drop box". The drop box can be thought of as a kind of piggy bank. It holds both cash taken in at the table in exchange for chips and the counter checks of customers who play at the casino on credit. A counter check is simply a credit instrument in the form of a bank check. The drop box can only be opened during a ceremony attended by a staff member of the Casino Control Commission.

In order to calculate a table's win or loss one adds the cash and credit instruments in the drop box to obtain the total "drop" for that table. From this sum one deducts the difference between the beginning table inventory (chips) and the ending table inventory adjusted for chip transfers, either in or out. Chip transfers occur because gamblers can carry chips from table to table. When too many chips are walked away from a table, the replacement chips are called a "fill." Conversely, if many chips are lost by a player to a table, the excess chips are removed and a credit is issued to the table. Thus, a $2000 win for a table might appear as follows:

Cash in drop box			$6000
Credit issued and outstanding			3000
			$9000
Less: Beginning table inventory		$14,000	
Chip transfers			
Fills		5,000	
Credits		(1,000)	
		$18,000	
Ending table inventory		(11,000)	
			$7,000
Win			$2,000

The total of each table's win or loss is calculated daily. These totals are reported monthly to the Casino Control Commission. A check for the tax due accompanies the report. At year end the petitioners employ super accounting firms to prepare financial statements, among other things. These statements indicate adjustments, if any, to taxes paid.

The Commission staff elected to audit the petitioner's books and records in order to determine if the petitioners had correctly stated gross revenues. In other words, had the petitioners paid sufficient taxes?

Both the super accounting firms and the Commission's staff rely upon sampling techniques in the performance of audits because the financial data generated each year by a casino operation must number in the millions of individual items. Whether samples accurately predict or not is a specialized field. Experts are often employed to create or to test sampling techniques which purport to accomplish audit objectives; i.e., the purpose of the audits.

In this case, it was necessary for the auditors to verify the contents of drop boxes, since it was from drop boxes that significant revenues were obtained. As described above, players counter checks are deposited into the drop boxes. Commission staff designed a sampling technique which purports "to provide the Commission with 95% assurance (confidence level) that the errors do not exceed 2% (upper precision limit) of the documents being examined." Counter checks are prenumbered. Pursuant to the design the staff selected random numbers within the set of prenumbered counter checks utilized during the audit year in question for the audit. It discovered that some were missing. Staff determined that the missing counter checks represented taxable transactions. It estimated the value of the missing documents from some average of the known documents. In statistics this whole process is called extrapolation. Unless the process is carefully designed however, it may result in mere conjecture or wild surmise.

Commission staff's rationale for assuming that the missing counter checks represented taxable transactions is based upon an apparently salutory reasoning process. To begin with, the regulations promulgated pursuant to the Casino Control Act require casinos to maintain financial documents until the Commission approves their destruction. A penalty is prescribed for their destruction (or loss) without

Commission approval. N.J.A.C. 19:45-1.8 and N.J.S.A. 5:12-129. No such approval was granted to either petitioner for its counter checks.The tax imposed upon casinos is for the public benefit. N.J.S.A. 5:12-144. Therefore, staff reasoned, since the casinos cannot produce documents which they were obligated to maintain, they are not entitled to the benefit of the doubt and the burden should be upon the casinos to show that the documents do not reflect taxable transactions.

This reasoning process correctly states the burden of proof. The burden is upon the petitioners to show that the assessment is not valid. Pantasote Co. v. City of Passaic, 100 N.J. 408 (1985); a case dealing with a property assessment; Duncan Truck Stop, Inc. v. Director, Division of Taxation, 4 N.J. Tax 367 (Tax Ct. 1982), dealing with a motor fuel tax.

In this case, petitioners have met the burden. They have established that the ceremonies and rituals which are performed upon counter checks preclude the missing counter checks from rational consideration as ever having been revenues.

The following is the briefest of descriptions of the internal controls employed by the petitioners in tracking counter checks. It should also be pointed out that safekeeping withdrawal forms are tracked in a similar fashion. Safekeeping withdrawal forms are used when a player draws from her own funds or deposit with the cashier, rather than on credit. Counter checks are used for credit play only Apparently some safekeeping withdrawal forms were also missing.

First, the credit player must open an account by establishing an approved line of credit. When the player wishes to draw upon the line of credit, the player does so by notifying the casino clerk who verifies that the player has credit by making a telephone call to the marker bank. The clerk then fills out a four part counter check showing the player's name and bank, the game, table number, current date and time. The amount of credit (chips) is then entered and the pit boss, the player and the clerk all sign the counter check. The clerk then verifies the player's signature via the display unit at the pit terminal. Color coded Lammar buttons, which signify various amounts, are then displayed on the table representing the exact amount of the transaction. The Lammar buttons are for the benefit of the surveillance cameras recording the transaction. The fourth copy of the counter check is placed on the table and the dealer then gives the player the correct amount of chips. The fourth

copy of the counter check is then deposited in the drop box. The first and second copies of the counter checks are sent to the Fill Bank via pneumatic tubes. The third copy is retained in the pit until the end of the day when it is sent along to accounting with void counter checks. The Fill Bank cashier, upon receipt of the first and second copies of the counter check, fills out a three part prenumbered check credit slip, keeps the first part, and sends the second part to the casino clerk. The first and second copies of the counter check then go to the marker bank cashier. The Marker Bank cashier lists counter checks on the pit check control and files the counter check parts in an envelope. At the end of the shift, the Marker Bank cashier is responsible for determining if the total of counter checks agrees with the total of check credit slips. In the meantime, the casino clerk receives the second copy of the check credit slip, gets it signed by the pit supervisor and dealer and puts it into the drop box. Then the color coded Lammar buttons are removed from the table and play resumes.

At the end of the day the drop boxes are removed from the tables by security and taken to the soft count room. There, a ritual is performed over each and every drop box. First, its number is shown to the TV camera. Then the contents of the drop box are dumped out onto the soft count table. Then the box is held up again to the camera eye in order to show the camera that the box is empty.

The contents of the box are calculated and entered upon the Master Game Report (MGR). The entire ritual is performed under the eye of a Commission representative who then memorializes his or her presence by signing the MGR. The MGR's are the basic documents reflecting the win or loss at a casino. Even if a counter check is eventually dishonored by a player, it is nevertheless considered revenue. Uncollected patron's checks are taken into consideration in the definition of "Gross Revenue." N.J.S.A. 5:12-24.

It is readily apparent, that if the internal controls described in depth at the hearing and briefly described above were in place, then if the missing counter checks were placed into the drop box, they were counted as revenue and the taxes were paid upon them. If they are missing now, the casino may be liable for a penalty for a violation of N.J.A.C. 19:45-1.8, but they cannot be considered as additional revenue over and above what has already been taxed, and the tax paid.

But what if they were not placed into the drop box? That is the darker side of this case. Does one immediately assume that the petitioners are getting away with tax free income? There is no hint, however, let alone an allegation, that some evil was afoot. The Commission staff, in answers to interrogatories propounded by Resorts, conceded this point. The concession was extended to the Sands at trial during the examination of William H. Delaney, Director of the Division of Financial Evaluations and Control for the Commission. He also acknowledged that the interest was incorrectly calculated.

The internal controls instituted by the petitioners, which were approved by the Commission, and which have been examined by the petitioner's accountants and examined again by the Commission staff, are asserted to be without material weaknesses. The relevant transactions of both Resorts and Sands were subject to being witnessed by floor and pit personnel and by surveillance. The relevant transactions were validated and analyzed by personnel in the casino cage and in the accounting department. They were signed off by casino personnel at each stage. Commission staff witnesses the final tally of counter checks in the soft count room. The controls would certainly have indicated the existence of stray counter checks. This is especially true if, as the Commission alleges, Resorts, for instance, lost more than 7,258 such documents representing more than seven and a half million dollars worth of revenues.

It is apparent that Commission staff did not consider internal controls in planning the examination or in evaluating the results of audit procedures applied. Government Auditing Standards and generally accepted auditing standards require that such considerations be given. Absent such planning, the assessment is a "naked assessment" and neither valid nor entitled to a presumption of correctness. United States v. Janis, 428 U.S. 433, 441-442 (1976); Weimerskirch v. Commissioner of IRS, 596 F.2d 358 (9th Cir. 1979).

What did happen to the missing documents? Peter Burns, Vice President of Finance and Treasurer of Bally's Grand Casino Hotel and formerly Vice President of Finance at Resorts testified that he believed that through neglect or oversight on the part of the pit clerks, the missing counter checks were voided by the pit clerks and, rather than returning them to the casino clerk at the end of the day, they were simply thrown into the trash. He testified that he had been told that this was so by a

pit boss and several pit clerks. This is the best, and most rational explanation given to account for the missing counter checks. It is corroborated by the fact that being thrown in the trash is apparently the only way that a counter check would not appear in the internal controls.

Therefore I **FIND** that the missing documents do not reflect untaxed revenue.

Petitioners cite the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) and cases appertaining thereto as an additional reason for invalidating the assessment, citing for instance Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313 (1984). Metromedia develops the standards by which an agency determines when to promulgate and when to adjudicate a rule. It is totally inappropriate however, for the Casino Control Commission, or any other State agency including the Treasury, to make any rule effecting generally accepted auditing principles.

One thing more, the Commission may wish to perform another audit upon the petitioners. It is not barred from doing so by N.J.S.A. 5:12-68. The statute merely bars an action for collection in state and federal courts. Since the Act permits the Commission to collect license fees and taxes at relicensing hearings, the Commission may determine and redetermine tax assessments at any time so long as the taxpayer remains a licensed casino in this State. The statute is obviously intended to limit actions against casinos which are no longer subject to the Casino Control Commission. Of course, the audit must be in accord with generally accepted auditing standards.

Accordingly, I **CONCLUDE** that:

A. The methodology used by the Commission in performing the gross revenue audits for Resorts International for the years 1979, 1980, 1983 and 1988 was not appropriate.

B. The methodology used by the Commission in performing the gross revenue audits for Greate Bay for the years 1982, 1983 and 1985 was not appropriate.

C. The aforesaid methodology did not produce an accurate tax calculation for each of the enumerated years.

D. The Commission acknowledged at the hearing that it had not calculated the interest properly. Since there is no tax presently due and owing, the issue is rendered moot in any case.

E. Since the audits are invalid on generally accepted auditing principles, there is no necessity to determine whether the audits were authorized by the Commission.

F. The Commission is not time barred from asserting additional tax liability against the petitioners.

It is **ORDERED** that the assessments, being invalid, are **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 29, 1990
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

8/30/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 31 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioners:

Karen E. DiSciascio
Peter Burns
John Rauen
John R. Osbourne
Douglas R. Carmichael
Daniel D. Meehan
William H. Delaney
Michael Gamache
Neal B. Hitzig

For the Respondent:

William E. Strawderman
John H. Trzake
Michael Wozniak

EXHIBIT LIST

For Petitioner Resorts:

R-1 Resorts' Accounting and Internal Controls, dated 9-19-79
R-2 Flow Chart of Internal Controls, dated 9-19-79
R-3 Four part counter check of $1,000.00 denomination
R-4 Inventory Control record for unused (blank) counter checks
R-5 Counter check book sign out log
R-6 Check (name) credit slip
R-7 Pit check control log
R-8 Marker bank reconciliation sheet
R-9 Master games summary
R-10 Price Waterhouse report on Resorts International hotel, Inc.'s compliance with the submission of Accounting and Internal Controls approved by the Casino Control Commission for the year ended 12-30-79, dated 4-14-80
R-10a Letter to I.G. Davis, Jr., President, from R.S. Fiore dated June 9, 1980, re: Price Waterhouse April 14, 1980 Immaterial Deviation Report
R-11 Price Waterhouse report on Resorts International Hotel, Inc.'s compliance with the submission of Accounting and Internal Controls approved by the Casino Control Commission for the year ended 12-28-80, dated 2-16-81
R-11a Letter to Francis Fee from Robert Fioree dated 4-27-81, re: Price Waterhouse 2-16-81, Immaterial Deviation Report
R-12 Price Waterhouse report on Resorts International Hotel, Inc.'s compliance with the submission of Internal Accounting Control surrounding casino operations approved by the New Jersey Casino Control Commission for fiscal year ended 1-1-84, dated 2-10-84
R-12a Letter to William Delaney from Robert Fiore dated 4-27-84, re: Price Waterhouse Immaterial Deviation Report, dated 2-10-84
R-13 Casino Control Commisison Report on Resorts' Gross Casino Revenues and Related Taxes for the period May-December 1978, dated 5-24-79
R-14 Casino Control Commission Report on Resorts' Gross Casino Revenues and Related Tax Audit for the period 1-1-79 to 1-2-83, dated 12-29-88

R-15 Casino Control Commission Report on Resorts' Gross Casino Revenues and Related Tax Audit for the period 1-1-83 to 12-31-85, dated 12-1-89
R-16 Letter to Patricia Delahanty, Supervisor Accounting/Auditing, Casino Control Commission from Peter Burns, Casino Controller, Resorts International Hotel, Inc., dated 5-21-80
R-17 Letter to Patricia Hetzel, Supervisor Accounting/Auditing, Casino Control Commission from Peter Burns, Casino Controller, Resorts International Hotel, Inc., dated 2-20-81
R-18 Letter to Deno Marino, Division of Financial Evaluation and Control, Casino Control Commission from Anthony Tyson, Assistant Casino Controller, Resorts International Hotel, Inc., dated 3-15-85
R-19 Resorts' casino gross revenues tax returns for 1979 by month
R-20 Resorts' casino gross revenues tax returns for 1980 by month
R-21 Resorts' casino gross revenues tax returns for 1983 by month
RS-1 Report of Douglas R. Carmichael, Ph.D., CPA
R-22 Report of Neal B. Hitzig, Ph.D., CPA
R-23 Comparison for Provisions of Uncollectible Checks

For Petitioner Greate Bay:

S-1 Section 24 of the Casino Control Act, definition of "Gross revenue"
S-2 Section 144 of the Casino Control Act, "Tax on gross revenue"
S-3 N.J. Admin. Code 19:54-1.1, et seq., "Taxes"
S-4 Sands Gross Revenue Audit - 1-1-82 to 12-31-85, dated 1-27-89 and delivered 3-9-89
S-5 1982 Form CCC-121, with Forms CCC-100
S-6 1983 Form CCC-121, with Forms CCC 100
S-7 1985 Form CCC-121, with Forms CCC-100
S-8 "Bad Debt" excess reserve calculation
S-9 Interest Recalculation, with copy of N.J. Stat. Ann. 54:49-3 "Interest on delinquent taxes and taxes paid after extension" and N.J. Stat. Ann. 54:49-11 "Waiver of penalty and interest"
S-10 1980-1985 Accounting and Internal Control Submission version of "Accounting Controls Within the Cashiers' Cage"
S-11 1990 Accounting and Internal Control Submission version of "Accounting Controls Within the Cashiers' Cage"
S-12 1980-85 Accounting and Internal Control Submission version of "Count Rooms; Characteristics"
S-13 1990 Accounting and Internal Control Submission version of "Count Romms; Characteristics
S-14 1980-1985 Accounting and Internal Control Submission version of "Procedure for Withdrawal of Safekeeping Funds at a Gaming Table"
S-15 1990 Accounting and Internal Control Submission version of "Procedure for Withdrawal of Safekeeping Funds at a Gaming Table"
S-16 1980-1985 Accounting and Internal Control Submission version of "Procedure for Removing Gaming Chips and Coin from Gaming Tables"
S-17 1990 Accounting and Internal Control Submission version of "Procedure for Removing Gaming Chips and Coin from Gaming Tables"
S-18 Form: "Identification Front Money Withdrawal & Counter Check Issuance"
S-19 Form: "Account Card"
S-20 Form: "Safekeeping Withdrawal"
S-21 Samples: "Lammer Buttons"
S-22 Form: "Pit Log"
S-23 Form: "Front Money Manual Activity Log"

S-24 Form: "Check Bank Close Out"
S-25 Form: "One Liner"
S-26 Form: "Check Bank Reconciliation/Deposit Report"
S-27 Form: "Drop Verification Report"
S-28 Form: "Master Gaming Report"
S-29 Flowchart: "Procedure for Withdrawal of Safekeeping Funds at a Gaming Table"
S-30 Casino Floor Plan - Locations - Manual Safekeeping Withdrawals
S-31 Form: "Request for Credit"
S-32 Form: "Credit Slip"
S-33 Form: "Fill Bank Close Out Sheet"
S-34 Flowchart: "Procedure for Removing Gaming Chips and Coin from Gaming Tables"
S-35 Casino Floor Plan - Locations - Manual Credit Slip
S-36 N.J. Admin. Code 19:45-1.7
S-37A 1982 Consolidated Financial Statements
S-37B 1982 Management Letter
S-37C 1982 19:45 Compliance Letter
S-38A 1983 Consolidated Financial Statements
S-38B 1983 Management Letter
S-38C 1983 19:45 Compliance Letter
S-39A 1985 Consolidated Financial Statements
S-39B 1985 Management Letter
S-39C 1985 19:45 Compliance Letter
S-40 Arthur Anderson & Co. Expert Report, dated 3-29-80
S-41 Division of Financial Evaluation & Control Opinion re 1982 operations
S-42 Division of Financial Evaluation & Control Opinion re 1983 operations
S-43 Division of Financial Evaluation & Control Opinion re 1985 operations
S-44 Section 149 of the Casino Control Act, "Determinations of tax liability"
S-45 N.J. Admin. Code 19:40-2.1
S-46 21 N.J. Regis. 1975-1983 (17 Jul 89)
S-47 21 N.J. Regis. 3022-3028 (18 Sep. 89)
S-48 Summons and Complaint, State of New Jersey, Casino Control Commission v. Greate Bay Hotel and Casino, Inc., Superior Court of New Jersey, Law Division, Mercer County, Docket No. L89-1122, dated March 13, 1989, filed March 14, 1989
S-49 Verified Application for a Hearing, In the Matter of the Verified Application of Greate Bay Hotel and Casino, Inc., t/a/ "Sands Hotel, Casino & Country Club" for a Hearing pursuant to N.J. Stat. Ann. 5:12-149, dated April 6, 1989, filed April 6, 1989
S-50 Cover Page, Inside Cover Page, and Pages 67 and 68 of New Jersey State Tax News, September/October 1988, Volume 17, Number 4/5

For the Respondent:

C-1 Statement on Auditing Standards

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-210
APPLICATION NO. 078843-21
(REGISTRATION NO. 051173-40)
OAL DOCKET NO. CCC 00847-90
ORDER NO. 90-42-3

APPLICATION OF ANTHONY L. GULITE, JR.
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 October 24, 1990,

IT IS on this 30th of November 1990, ORDERED that the initial decision is adopted; 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

IT IS FURTHER ORDERED that Anthony L. Gulite, Jr., is prohibited from reapplying for or obtaining 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 this denial shall not affect Anthony L. Gulite, Jr.'s current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 847-90
AGENCY DKT. NO. 90-EA-210

ANTHONY J. GULITE, JR.,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Anthony J. Gulite, Jr., petitioner pro se

James J. Armstrong, Deputy Attorney General for the respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: July 24, 1990 Decided: September 7, 1990

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

This matter concerns the letter filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on December 4, 1989, objecting to the issuance of a casino employee license to the petitioner, Anthony J Gulite, Jr. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law on January 31, 1990, 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 telephone prehearing conference was held on April 9, 1990, and the parties agreed that the issues in this matter are:

A. Whether the petitioner was convicted of a crime in 1976, which is equivalent to a listed statutory disqualifier in N.J.S.A. 5:12-86c.

B. Whether in view of his criminal record, the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

C. Whether the petitioner may demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h.

At the prehearing conference, the respondent was represented by Deputy Attorney General Charles F. Kimmel; however, Deputy Attorney General James J. Armstrong presented the Division's case at the hearing.

The hearing took place on July 24, 1990, at the Office of Administrative Law in the Atlantic County Courthouse, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** the facts in this matter are not in dispute.

The Division showed that the petitioner has the following criminal record:

(1) As a juvenile, Mr. Gulite was arrested in 1970 for shoplifting. The petitioner disclosed this arrest on his personal history disclosure form and indicated that he was not convicted of this offense.

(2) On June 4, 1976, the petitioner was arrested for contributing to the delinquency of a minor after the police discovered two minor females in the petitioner's car (R-4). The petitioner was not convicted of this offense and he did not disclose the arrest on his personal history disclosure form. He acknowledged the arrest during his interview with the Division's representative.

(3) On October 23, 1976, the petitioner was arrested and indicted for the possession of a controlled dangerous substance with intent to distribute (marijuana), and employing a juvenile in a drug distribution scheme (R-2, R-3). According to the investigation report, the petitioner and a female juvenile were selling marijuana from the petitioner's vehicle. In 1977, Mr. Gulite entered a guilty plea to the possession of a controlled dangerous substance and possession of a controlled dangerous substance with intent to distribute (R-3). Mr. Gulite was given

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a suspended prison term, was placed on three years probation and ordered to perform community service. Mr. Gulite disclosed this conviction on his personnel history disclosure form. During his interview with the Division's representative and at the hearing, the petitioner indicated that he was setup by the persons from whom he had purchased the marijuana since they were seeking a more favorable plea bargaining arrangement as to their own criminal charges.

(4) On February 6, 1977, the petitioner was arrested for theft by receiving stolen property (R-5). After he was indicted, Mr. Gulite was acquitted on this charge (R-6) and he represented that he and the driver had the permission on the owner's wife to use the vehicle. Mr. Gulite disclosed this arrest on his personal history disclosure form.

(5) On December 23, 1980, Mr. Gulite was indicted for theft by receiving stolen property (R-7); however, there was no conviction. The petitioner failed to disclose this arrest on his personal history disclosure form but acknowledged the arrest during his interview with the Division's representative.

(6) On September 17, 1981, Mr. Gulite was charged with aggravated assault (R-8). The complaint was filed by his female friend. The charge was later downgraded to simple assault and subsequently dismissed. Mr. Gulite did not disclose this arrest on his personal history disclosure form, but admitted the arrest during the interview with the Division's representative. According to Mr. Gulite, this matter resulted from a domestic dispute.

(7) On February 5, 1983, the petitioner was arrested and charged with the unlawful taking of an automobile (R-9). The charge was later dismissed. The petitioner did not disclose this arrest on his personal history disclosure form but acknowledged the arrest during his interview with the Division's representative.

(8) On February 28, 1983, the petitioner was arrested and charged with harassment (R-10). Mr. Gulite did not disclose this arrest on his personal history disclosure form but acknowledged the arrest during the interview with the Division's representative. According to Mr. Gulite, a female friend was harassing him by phone and he retaliated. The complaint was later dismissed.

(9) On August 20, 1983, Mr. Gulite was arrested and indicted for terroristic threats (R-11). Apparently Mr. Gulite called in a bomb scare to a 7-11 store where he was employed. Mr. Gulite stated that he made the phone call as a joke; however, the police were called and he was arrested. The petitioner pled guilty to the downgraded charge of harassment (R-12). The petitioner was sentenced to one year probation and fined $200.00. Since Mr. Gulite did not pay the fine within the period specified, his probationary period was extended. Mr. Gulite disclosed this arrest on his personal history disclosure form.

(10) On August 31, 1988, the petitioner was indicted by the United States District Court for the Middle District of Florida and

charged with nine counts of making false statements to a federally licensed firearm dealer and of receiving firearms transported in interstate and foreign commerce (R-13). Mr. Gulite stated that he is a gun collector and while in Florida on vacation he purchased seven firearms for approximately $4,000.00. He was requested to fill out a permit application and Mr. Gulite stated that he misunderstood the questions relating to his criminal record. Mr. Gulite plead guilty to one count of receiving a firearm which had been transported in interstate and foreign commerce and was placed on probation for five years (R-14, R-15, R--16). Mr. Gulite is still serving this period of probation.

In 1984, the petitioner received a casino hotel employee registration, and between March - April 1984, he was employed by the Atlantis Hotel and Casino as a bus person. This employment was terminated for insubordination. From May through August 1984, the petitioner was employed by the Sands Hotel Casino and Country Club as a bar porter. Mr. Gulite was terminated after he refused to accept a transfer to another position. Between October 1988 and March 1989, the petitioner was employed by Caesars Boardwalk Regency Hotel and Casino as a bar porter. Mr. Gulite quit this job to take a better paying position. From March to May 1989, the petitioner was employed by Trump Plaza Hotel and Casino as a service person. He was terminated from this position for unsatisfactory work performance. Mr. Gulite alleged that his Columbian supervisor had him fired so that he could hire a Columbian. For about one year starting in May 1989, the petitioner was employed by Claridge Hotel and Casino as a parking attendant. Thereafter for about three months, Mr. Gulite worked as a bar porter at the Trump Taj Mahal Hotel and Casino.

At the time of the hearing, the petitioner was unemployed. Mr. Gulite stated that his girlfriend is helping to support him and he is trying to start a business selling and buying baseball cards. Mr. Gulite is presently 35 years old, divorced, and has a dependent daughter.

With funds from a federal employment program, Mr. Gulite attended the Boardwalk and Marina Casino Dealer School in 1988. He has completed the course in blackjack. Mr. Gulite has applied for a casino employee license because he wants a better job as a casino blackjack dealer.

On his own behalf, Mr. Gulite argued that a substantial period of time has elapsed since many of the arrests reflected in his criminal record and that some of the arrests were due to harassment by local police officials. Mr. Gulite argued that he is now rehabilitated.

On behalf of the Division, Mr. Armstrong argued that the 1977 drug conviction is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c. Further, Mr. Armstrong argued that because of his criminal record, the petitioner cannot at this time show that he is rehabilitated or that he is a person of good character, honesty and integrity as required for casino licensure.

CONCLUSIONS OF LAW

Having reviewed the facts, I agree with Mr. Armstrong's argument and I **CONCLUDE** that the Division has established a statutory disqualifier pursuant to N.J.S.A. 5:12-86c. The 1977 conviction for the possession of a controlled dangerous substance with intent to distribute, is comparable to a violation of N.J.S.A. 2C:35-5 and is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1). Since the Division has established a statutory disqualifier, the next issue is whether the petitioner has shown rehabilitation. Although the statutory disqualifier occurred more than 10 years ago, there have been several later criminal convictions, and the petitioner has presented no witnesses or exhibits to support his allegation of rehabilitation. Mr. Gulite has taken a blackjack dealer course in order to get a better job; however, to date he has a poor employment record in the casino industry. Therefore, I **CONCLUDE** that Mr. Gulite at this time cannot show that he is rehabilitated pursuant to the standards set forth in N.J.S.A. 5:12-90h. For the same reasons, I **CONCLUDE** that Mr. Gulite has not shown that he possesses the requisite good character, honesty and integrity required for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b. In addition, I recognize that the Division in its complaint did not allege a statutory disqualifier pursuant to N.J.S.A. 5:12-86b based on the petitioner's failure to fully disclose his criminal record on his personal history disclosure form. However, I **CONCLUDE** that his failure to disclose his entire criminal record, does negatively reflect on the petitioner's good character, honesty and integrity.

Therefore, I **ORDER** that the recommendation of the Division that Anthony J. Gulite, Jr., be denied a casino employee license be **AFFIRMED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 7, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

9/10/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 17 1990
DATE

Jane LaVecchia
OFFICE OF ADMINISTRATIVE LAW

cad

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EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

None

For the Respondent:

R-1 Investigation Report prepared by the Division of Gaming Enforcement, dated August 18, 1989, with attachments

R-2 Investigation Report of the Borough of Bellmawr Police Department, dated October 24, 1986, with attachments

R-3 Indictment filed against Anthony J. Gulite, Jr. in 1976

R-4 Investigation Report of the Woodbury Police Department, dated June 25, 1976, with attachments

R-5 Investigation Report of the Woodbury Police Department, dated February 6, 1977, with attachments

R-6 Gloucester County Criminal Record relating to the disposition of a charge filed against Anthony J. Gulite, Jr. in 1977

R-7 Indictment filed against Anthony J. Gulite, Jr., in September 1980

R-8 Camden County Investigation Report, dated September 17, 1981, with attachments

R-9 Camden County Investigation Report, dated February 5, 1983, with attachment

R-10 Camden County Arrest Report, dated February 28, 1983

R-11 Indictment filed against Anthony J. Gulite, Jr., in 1983

R-12 A judgment as to the 1983 indictment against the petitioner

R-13 Federal Indictment filed against the petitioner, with attachment

R-14 Judgment as to the Federal Indictment

R-15 Superseding information relating to the Federal Indictment

R-16 Judgment as to the superseding information

R-17 Personal History Disclosure Form - 2A submitted by the petitioner

WITNESSES:

For the Petitioner:

Anthony J. Gulite, Jr.

For the Respondent:

None

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STATE OF NEW JERSEY

CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-104
APPLICATION NO. 077485-21
OAL DOCKET NO. CCC 08224-89
ORDER NO. 90-42-14

APPLICATION OF MICHAEL HELGELAND
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 October 24, 1990,

IT IS on this 1st day of November 1990, ORDERED that the initial decision is adopted; 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

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

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8224-89
AGENCY DKT. NO. 90-EA-104

MICHAEL HELGELAND,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Michael Helgeland, petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for the respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: July 30, 1990 Decided: September 13, 1990

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

This matter concerns the letter filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on August 25, 1989, objecting to the issuance of a casino employee license to the petitioner, Michael Helgeland. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law on October 26, 1989, 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 telephone prehearing conference was held on February 26, 1990, and the parties agreed that the issues in this matter are:

A. Whether the petitioner, with specific reference to his record of arrests, has failed to reveal any facts material to qualification for casino employee licensure within the meaning of N.J.S.A. 5:12-86b.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

At the prehearing conference, the respondent was represented by Deputy Attorney General Charles F. Kimmel; however, Deputy Attorney General Ralph L. Fusco presented the Division's case at the hearing.

The hearing took place on July 30, 1990, at the Office of Administrative Law in the Atlantic County Courthouse, and the record in the matter closed on that date.

I **FIND** the facts in this matter are not in dispute.

The Division showed at the hearing that the petitioner has the following criminal record (R-3):

(1) The petitioner was arrested on June 21, 1973 by an Asbury Park police officer and charged with the possession of a controlled dangerous substance (marijuana), a violation comparable with the current provisions in N.J.S.A. 2C:35-10. After being convicted of this offense, the petitioner was given a six-month conditional discharge and fined $50.00.

(2) The petitioner was arrested on January 6, 1974 by an Ocean Township police officer and was charged with the possession of a controlled dangerous substance (marijuana), a violation comparable with the current provisions in N.J.S.A. 2C:35-10. The petitioner was found guilty, was fined $100.00 and was ordered to pay $25.00 in court costs.

(3) On January 14, 1982, the petitioner was arrested by an Ocean Township police officer and charged with terroristic threats, a violation of N.J.S.A. 2C:12-3, after the petitioner allegedly had threatened his wife. The matter was dismissed on January 25, 1982.

(4) On January 26, 1985, the petitioner was arrested by an Ocean Township police officer and charged with issuing a bad check, a violation of N.J.S.A. 2C:21-5. According to the petitioner, he thought he had enough money in his account to cover the check when he gave the check to his local Foodtown store. The petitioner was convicted of this offense and ordered to pay a $25.00 fine, $25.00 in court costs and $25.00 to the Violent Crimes Compensation Board.

(5) On August 3, 1986, the petitioner was arrested for disorderly conduct, a violation of N.J.S.A. 2C:33-2. According to the petitioner, he and his girlfriend were having an argument and the police were called. The petitioner was convicted of this offense and fined $60.00.

In addition to the above criminal charges, the petitioner was twice arrested for drunk driving in Ocean Township, a violation of N.J.S.A. 39:4-50. The first arrest was on March 9, 1974, at which time the respondent's driver license was suspended for two years and he was fined $200.00. The second arrest took place on June 13, 1982 at which time his driver license was suspended for two years and he had to pay a fine of $500.00.

On his application for a casino employee license (R-1), the petitioner listed only the 1986 disorderly persons conviction.

Mr. Helgeland stated that he filled out his casino employee license application at home, and that it took him a while to complete the form . He had to check his records to get some information and he needed time to recall his former positions. The petitioner stated that he tried to fill out the form accurately.

The petitioner admitted that when he was filling out his application for a casino employee license, he recalled the two marijuana convictions; however, he did not list them because he considered them unimportant since they occurred a long time ago while he was in high school, and also because he felt that having too many arrests and convictions on his record might result in the denial of his application. Mr. Helgeland admitted that he withheld information about the same two arrests when he applied to join the navy.

As to the 1982 terroristic threat arrest, and the 1985 bad check arrest and conviction, the petitioner stated that he had forgotten about these matters at the time he filled out the application form. As to the two drunken driving offenses, Mr. Helgeland stated that he did not think he had to list motor vehicle violations on his application. The petitioner has had no arrests or convictions since 1986.

James T. Minniti, an investigator employed by the Division, was assigned to check the petitioner's application. On June 5, 1988, Mr. Minniti spoke to the petitioner and reviewed with him the information contained in his application. At that time, the petitioner stated that he had only one arrest and conviction, namely the 1986 disorderly persons offense which he listed on his application. When confronted by Mr. Minniti with the other arrests and convictions, the petitioner

admitted that he recalled the two marijuana offenses and stated that he had not listed them because they happened a long time ago and were minor matters.

On his own behalf, Mr. Helgeland stated that he is 36 years old, divorced, and lives with his son (a minor). Mr. Helgeland is currently unemployed and is receiving welfare benefits. The petitioner's last job was working for a restaurant in the Port-O-Call Hotel as a dishwasher. Mr. Helgeland held this position for approximately one year and was fired for poor attendance. Prior to that time, Mr. Helgeland had a job working for a landscaping business. In the summer of 1988, the petitioner took a slot mechanic course at the Atlantic County Community College. According to the petitioner, the State paid for him to take this course and he received a certification that he completed the program. Mr. Helgeland has not worked for the casino industry and he applied for the casino employee license so that he could get a position as a slot mechanic. The petitioner stated that it would be a waste of state money if he is not allowed to get the type of job he was trained for.

Mr. Helgeland stated that he would like to improve his life and he would like to get a new start with a good job. The petitioner stated that he is a person of good character, honesty and integrity.

In closing, Mr. Fusco suggested that the petitioner did what many people try to do, namely, minimize his criminal record since he felt it might reflect negatively on him and prevent him from getting a casino employee license. Mr. Fusco argued that the petitioner fully completed other portions of the application form; however, he knowingly did not list all of his criminal offenses. Mr. Fusco argued that Mr. Helgeland's failure to list all of his criminal arrests and convictions on his application form constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86b. Further, Mr. Fusco argued that because of his failure to reveal his entire criminal record, the petitioner could not show that he possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

CONCLUSIONS OF LAW

The Casino Control Act provides that a person shall be disqualified from casino employee licensure if he or she fails "to reveal any fact material to qualification," N.J.S.A. 5:12-86b. In this matter, the Division has shown that the petitioner intentionally did not reveal part of his criminal record since he was afraid that these

arrests and convictions might adversely affect his chances to obtain a casino employee license. Also, I question Mr. Helgeland's representation that he forgot about the terroristic threat and bad check incidents. I accept the petitioner's representation that he did not think he had to list on the application form the two motor vehicle offenses. Based on my reading of Question 16 of the application form (R-1), it is clear that most people would assume that this question relates to criminal arrests and convictions and does not include motor vehicle offenses. However, I question Mr. Helgeland's representation that he forgot about the terroristic threat and bad check incidents. Based on the facts, I agree with Mr. Fusco's argument and I **CONCLUDE** that the Division has established a statutory disqualification pursuant to N.J.S.A. 5:12-86b.

In addition, based on Mr. Helgeland's lack of candor in filling out his application for a casino employee license, I **CONCLUDE** that at this time Mr. Helgeland cannot show that he possesses the requisite good character, honesty and integrity required for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

Therefore I **ORDER** that the recommendation of the Division that Michael Helgeland be denied a casino employee license be **AFFIRMED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 13, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

9/13/90
DATE

Kim Wood
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 17 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

cad

EXHIBITS ADMITTED INTO THE EVIDENCE:

For the Petitioner:

None

For the Respondent:

R-1 Petitioner's application for a casino employee license, Personal History Disclosure Form - 2A

R-2 Marked for identification only

R-3 Criminal record of Michael Helgeland

WITNESSES:

For the Petitioner:

Michael Helgeland

For the Respondent:

Michael Helgeland
James T. Minniti

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-440; 89-422
APPLICATION NO. 072394-22
REGISTRATION NO. 06954-40
OAL DOCKET NO. CCC 4890-89
ORDER NO. 90-25-4

APPLICATION OF JAMES H. HENDERSON
FOR A CASINO EMPLOYEE LICENSE

AND

ORDER

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

Complainant,

v.

JAMES H. HENDERSON,

Respondent.

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of June 20, 1990,

IT IS on this 13th day of July 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted and the complaint is dismissed substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4890-89
AGENCY DKT. NO. 89-EA-440
AND 89-422

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
JAMES H. HENDERSON,
Respondent.

James J. Armstrong, Deputy Attorney General, on behalf of petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Guy S. Michael, Esq., on behalf of respondent (Brown & Michael, attorneys)

Record Closed: March 29, 1990 Decided: April 20, 1990

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

This matter arises out of petitioner's objection to respondent's licensure as a casino employee and to his continued employment in the casinos as a registrant 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 hearing was conducted on March 29, 1990, after which the record closed.

The questions presented are whether respondent was convicted of aggravated assault in the third degree, N.J.S.A. 2C:12-1b(2), a statutory disqualifier pursuant to N.J.S.A. 5:12-86c; whether he possesses the good character required for licensure pursuant to N.J.S.A. 5:12-89b(2) and whether he can demonstrate rehabilitation with respect to the license sought, and/or his registration pursuant to N.J.S.A. 5:12-90h or 91d.

The basic facts are undisputed. Respondent is 39 years old. He has a long criminal record going back to 1970. Respondent's offenses include assaults, weapons possession, causing disturbances, indecent exposure, and interfering with and eluding police. The last of his offenses occurred in 1985 and resulted in a conviction for aggravated assault in the third degree. He was sentenced to serve 364 days in the Cape May County Jail for this offense, was placed on two years' probation and was required to make restitution in the amount of $782. He violated probation in April 1987 when he failed to make payment as required.

Respondent testified that he was ashamed of his prior criminal record which was fueled by a poor attitude, unhealthy associations and a drinking problem. When he was released from prison in 1985 he decided to make a new start and sought employment in the casinos. In August 1986 respondent went to work at Bally's Grand Hotel and Casino cleaning up public areas in the hotel. He now lives alone in Atlantic City; he has substantially reduced his drinking and no longer goes to bars at all, and does not see any of the people with whom he previously socialized. Respondent testified that his sole desire is to continue working and to develop the sense of self-respect which comes from work. He testified that he has never had a disciplinary problem with his employer.

Jerome Conforto has been a supervisor of housekeeping at Bally's for nine years and he has supervised respondent. He testified that respondent treats guests well, has a positive attitude and when called upon does extra work. He described respondent as a responsible individual with whom he has never had a day's trouble. This is the substance of the record.

Respondent acknowledged that he was convicted of a statutory disqualifier in 1985 and that he has a criminal record spanning 15 years. His burden here is a heavy one. Nevertheless, he has had no record of criminal involvement since 1985 and has been successfully employed at Bally's since August 1986. Respondent was credible when he testified that he was ashamed of his former behavior and that he had

redirected his life. He presently cleans up the public areas of the hotel and with a casino employee license he could extend this work to the casino floor. Respondent appears to understand that alcoholism and peer influences were among the root causes of his prior behavior. Additionally, at age 39 he seems to appreciate the contrast between his former and present life-styles. While it might be more comforting if respondent's good conduct extended a few more years as a balance to his prior history, to deny his license application or revoke his registration on this basis would be to approach rehabilitation mechanically. It appears that respondent is in the process of redirecting himself, and it would do him a great disservice to now take from him the very thing which buttresses his resolve. The public interest seems little at risk by this.

Based on the foregoing, it is my conclusion that respondent has established that he is a person of good character and that he has been rehabilitated from his statutory disqualifier as well as from his prior criminal conduct. It is **ORDERED** that he be permitted to retain his casino registration and that he be awarded a casino employee license.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

4/20/90
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

4/23/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

APR 24 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

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EVIDENCE LIST

For the petitioner: -

P-1 Investigation Report

P-2 Indictment No. I-85-02-0063

P-3 Judgment of Conviction and Order for Commitment

P-4 Uniform Arrest Report

P-5 Indictment No. 363-73

P-6 Uniform Arrest Report

P-7 Investigation Report

P-8 Indictment No. 283-76

P-9 Uniform Arrest Report

P-10 Uniform Arrest Report

P-11 Uniform Arrest Report

P-12 Indictment No. 215-78

P-13 Uniform Arrest Report

P-14 Arrest Report

P-15 Personal History Disclosure Form - 2A

P-16 Personal History Disclosure form - 4A

P-17 Indictment No. 130-70

WITNESSES

For the respondent:

James H. Henderson, respondent
Jerome Conforto

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-196
LICENSE NO. 001692-21
OAL DOCKET NO. CCC 1277-89
ORDER NO. 90-36-7

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

Complainant,

v.

ORDER

JOHN L. ITRI, JR.,

Respondent.

A hearing 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 exceptions and a reply to exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meetings of August 22, 1990 and September 12, 1990,

IT IS on this 21st day of September 1990, ORDERED that the initial decision is modified as follows:

> In determining whether an offense is disqualifying pursuant to section 86(c)(2), the "rehabilitation" factors listed in section 90(h) are to be considered. Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985). In his initial decision the Administrative Law Judge (ALJ) analyzed those factors and determined that the respondent's offense of possession of CDS was inimical to his continued licensure.

> We agree with the ALJ that the respondent's admitted possession of CDS on casino premises raises serious concerns about his fitness for continued licensure and that the seriousness of this offense is not outweighed by the mitigating and rehabilitative evidence presented. However, because the respondent's 1986 offense of distribution of CDS must be analyzed in terms of the same section 90(h) factors, the ALJ erred in finding the respondent rehabilitated from that offense. Accordingly, we find that the respondent failed to demonstrate his rehabilitation from the offense of distribution of CDS and reject the ALJ's conclusion to the contrary.

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1277-89
AGENCY DKT. NO. 89-196

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
JOHN L. ITRI, JR.,
Respondent.

Norma L. Stancil, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Gilbert Brooks, Esq., for respondent (Kozlov, Seaton & Romanini, attorneys)

Record Closed: September 5, 1989 Decided: June 28, 1990

BEFORE **RICHARD J. MURPHY,** ALJ:

Statement of the Case

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission (Commission) on December 30, 1988 seeking to revoke the Casino Employee License of respondent John L. Itri, Jr., pursuant to *N.J.S.A.* 5:12-86, 89-91, 107-108, 129-130, because of his guilty plea to distribution of a controlled dangerous substance (CDS). Respondent currently holds casino employee license number 01692-21 and is employed by the Sands Hotel/Casino as a floorperson. On or about April 2, 1986, respondent was indicted for distribution of a CDS, conspiracy to

distribute, contrary to *N.J.S.A.* 24:21-19(a)(1), 21-24, comparable to distribution. Respondent plead guilty to distribution of a CDS.*

State of the Issues

(1) Whether the respondent is disqualified from holding a license/registration under *N.J.S.A.* 5:12-86c(a), because of convictions for the offense of distribution if a CDS; (2) whether the licensee can demonstrate rehabilitation pursuant to *N.J.S.A.* 5:1290h/91d; (3) whether the licensee can demonstrate by clear and convincing evidence that he possesses the requisite good character, honesty and integrity required by *N.J.S.A.* 5:12-89b(2), and 90b, considering the above factors of rehabilitation.

Findings of Fact

The material facts are not in dispute. The parties stipulate to exhibits P-3 through P-5, which are the indictment for distribution of a CDS and conspiracy to distribute, the judgment of conviction as to distribution, and the plea retraction in Superior Court. The indictment charges that or about the 9th day of December 1985 and 24th day of January 1986 in Winslow Township, John L. Itri, Jr., distributed a CDS in the form of cocaine to one George Snyder, and that he conspired to do so with a John R. Marcucci on January 24, 1986. Mr. Itri retracted this plea of not guilty and entered a plea of guilty to Count II, distribution of a CDS, based on *N.J.S.A.* 24:21-19(a)1. He was sentenced to five years probation with conditions that he receive drug and alcohol evaluation and treatment and any follow-up as necessary. He was also required to perform 300 hours of community service at a rate 60 hours per year, and pay $30 to the Violent Crimes Board, as well as a fine of $750. Count I as to distribution and Count III as to conspiracy were dismissed. The sentencing Judge noted as aggravating factors, the risk that the defendant would commit another offense; that there is a substantial likelihood that the defendant was involved in organized criminal activity; and the need for deterring the defendant from violating

* As to procedural history, this matter was filed with the Office of Administrative Law on February 22, 1989 for hearing as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*, and the prehearing was held on May 1, 1989, with a prehearing issued on May 23, 1989. The hearing was held in Galloway Township on August 18, 1989 and the record closed on September 5, after receipt of post-trial briefs. The due date for submission of the initial decision was extended on several occasions for reasons not related to this case and I regret any hardship or inconvenience that this unavoidable delay may have caused the parties.

the law as mitigating, the judge noted that the defendant had no history of prior delinquency or criminal activity and had led a law abiding life for a substantial period of time before commission of the present offense and will participate in program of community service, is particularly likely to respond affirmatively to probationary treatment, and imprisonment of the defendant will entail excessive hardship to himself or his dependents. At the plea retraction on October 6, 1986 in Camden, the respondent stated under oath that he knowingly gave George Snyder cocaine on January 24, 1986.

The Division submitted two police reports, which were admitted over the respondent's objection grounded on hearsay. In an operation report dated December 9, 1985, Detective Cuomo of the Winslow Township Police Department stated that a report from a "employee - - informer"George Snyder, had been received stating that John Itri came to Mr. Snyder's place of work, asked Snyder if he got "high," and, when Snyder indicated that he did occasionally, Itri asked him were he could "cut some stuff up." Itri allegedly went into the gas station office and removed a bag of white powdery substance from his pocket, which he then snorted. He placed some inside a gum wrapper and gave it to Snyder to use later. After Itri left, Snyder called the Winslow Police, who responded and determined that the substance given by Itri to Snyder was cocaine. A police department report prepared by Detective Cuomo on December 20, 1985 contains another report from Snyder:

> . . . [u]ndersigned met with Snyder who informed the undersigned that he had seen Itri again at the service station this date, the informant indicated that Itri stated the was getting another "load" of cocaine on 12-31-85 so he would have plenty for New Year's Eve. The informant stated that Itri told him would drop a little off for him (informant) to use. Informant further stated that when he asked Itri if he could buy some Itri stated, "Yeah, if you like it there will be plenty for you to buy . . . . [P-1 at 3; emphasis added]

Detective Cuomo instructed Snyder to "feel-out" Itri on whether he would supply additional quantities of cocaine, and the detective related the following comments from the informant he his report:

> . . . Informant indicated that Itri asked him he could sell an eighth of an ounce of cocaine for him. The informant had advised Itri that he could and made arrangements to meet with Itri and accept the delivery on 1-25-86 at 10:30 a.m. The undersigned informed the C.I. [Confidential Informant] that surveillance would be instituted at the predetermined meeting place and Itri would be stopped prior to his arrival. Later . . . . . at around 10:00 a.m. this date the undersigned received a

> second call from the C.I. Same indicated that Itiri [sic] had returned and had "Fronted" him the 1-8 oz. Indicating that he would return this date at 2130 hours to collect the $290 cost of the advanced. The informant wrote the license plate of the vehicle Itri and his companion had returned to the station and telephoned the undersigned. [The informant also stated to detective Cuomo that] . . . Itri returned with an unknown companion . . . and called the informant over to the vehicle. Itri gave the informant the package and told him he would be back this evening at 2130 hours to collect the money owed and to provide him (the informant) with additional [sic] product he could distribute . . . . [P-1 at 4]

Itri and Marcucci returned to Snyder's place at work at the gas station around 9:30 p.m., and were arrested after leaving the station. No CDS was found in their possession or at the gas station on this occasion, but they were arrested and charged on the basis of their previous transaction with Snyder. The total amount of cocaine involved was stipulated by the parties to be 2.71 grams.

No witnesses were presented by the Division, which relied exclusively on the indictment, judgment and conviction, and other supporting documentation.

John Itri testified that he had been a blackjack floor supervisor for 9 years and considered himself a "good employee." He stated that his contact with George Snyder began inadvertently, when he was passing through the Exxon gas station were Snyder worked, after getting "wasted" at a party through cocaine use. Itri testified that Snyder told him to "stop by" if anything ever happens. He denies that he recruited or asked Snyder to buy or pay for coke and denied that he was a drug dealer, but stated that he had a "problem" with cocaine and thought it was "nice" to turn people on through drugs. He claimed that he was not addicted to cocaine, and also not an alcoholic, but had problems with abuse of those two drugs. He was in the habit of providing cocaine to friends on occasion, and on the night of his first dealings with Snyder he had purchased a "eight ball" or approximately 3 grams of cocaine, which he intended to share with friends. He claims that he "just gave" cocaine to Snyder, but Snyder said he would give him money for the CDS later that evening. He denied that he had been dealing drugs with Snyder, because he was not selling at a profit, but merely covering his cost.

Itri also admitted drug use with casino patrons, on casino premises. He claims that his drug problem accelerated in the casino business, where "coke pops up like beer" and that sometimes he "had to have it." He stated that his drug use in casino rooms or parking lots with patrons or "players" happened 7 or 8 times at the rate of

approximately once a month when, usually at the end of a shift, regular players would invite him to rooms by saying that they "got something for you," meaning CDS, usually cocaine. He also stated that he used cocaine on the job to combat fatigue and long hours, and had snorted cocaine in the casino men's room.

He denied that he had been dealing drugs with Snyder, because he was not selling at a profit, but merely covering his cost.

Following his conviction and sentence to five years probation, he has performed some of his 300 hours required of community service working with senior citizens, which he states makes him feel "good about himself." He also has worked at the Holy Trinity Church in Audobon with neighborhood assistance, helping to set-up tables and the like. He is married with two young sons and states that he has "overcome his coke problems" and no longer makes the mistake of picking his friends through drugs. He has had no other convictions or arrests. He offers a letter from his probation officer, Erin Conway, who states that ". . . he has maintained an above average reporting record, remains cooperative and has made above average progress on the conditions of his probation. This offense appears to be defendants first contact with the criminal justice system. If the defendant maintains his current progress this officer fully expects it to be the last. . . ." [R-1] So far, Ms. Conway is correct in that regard and I so **FIND.** A supervisor, who oversees his volunteer help as a term of probation, testifies that he has completed 123 hours of service and is "a fine worker [who] . . . will do what is required at all times." [R-2] Other employees at the neighborhood assistance program attest to Itri's friendly attitude, efficiency and cooperation, as well as his regret for his drug offense [R-3 thru R-5]

Discussion and Conclusions of Law

As stated, the issues are disqualification, which the Division must prove, rehabilitation to be affirmatively shown by the respondent, and whether John L. Itri can demonstrate be clear and convincing evidence that he possess the requisite good character, honesty and integrity, including consideration of those factors of rehabilitation.

As to disqualification, there is no contest or dispute that the respondent's conviction for distribution of cocaine is a disqualifying offense under *N.J.S.A.* 5:12-86c(1) and I so **CONCLUDE.**

Respondent argues that he has affirmatively demonstrated his rehabilitation pursuant to *N.J.S.A.* 5:12-90h and that his employee license should therefore not be revoked. The factors of rehabilitation to be considered by the Commission are set forth in section 90h:

> (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; and
>
> (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 release programs, or the recommendation of the persons who have or have had the applicant under their supervision. (emphasis added

Respondent makes the following argument, which I set forth in full:

> As for the first factor, the nature and duties of the position applied for, Mr. Itri is licensed and would like to continue to be licensed as a Casino Floor Person. Whereas as a Casino Floor Person, he has important responsibilities in the casino, the Casino Control Commission has recognized in previous decisions, that there is a distinction in terms of the positions involved in the casino. In Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985), the Commission recognized the distinction between the application for a casino license and the application for license as a key casino employee. Obviously in the case at bar, Mr. Itri is not applying for a key casino employee license and is instead seeking to maintain his current casino license.
>
> This factor is somewhat related to the second factor which deals with the nature and seriousness of the offense or conduct. The reason for this is, of course, the fact that certain

offenses could directly impact upon the type of work an employee seeking to be licensed performs for the casino. For example, in Davis, the Commission was faced with an employee who was employed for four and one half years in the soft count room. Simultaneously with this employment, she was employed as an income maintenance technician by the Atlantic County Welfare Board. Subsequently, she was indicted for theft for a failure to make the required disposition of funds that came into her control in her position as an income maintenance technician at the Altantic County Welfare Board. The offense was considered particularly serious in the Davis case because of the similarities between her performances for the Atlantic County Welfare Board and the Casino. Id. 301-305.

Unlike the Davis case, Mr. Itri's performance as a Floor Person is not directly impacted or related to the circumstances surrounding the offense that occurred in January of 1986. As to the third factor, under Section 90(h), the circumstances under which the offense or conduct occurred, the case at bar is distinguishable from other cases in which the Commission has approved the revocation of a casino employee license. For example, in the case of Division of Gaming v. Maldonado, 10 N.J.A.R. 69 (1987), the Commission was faced with a casino employee who had been arrested for selling cocaine to an undercover agent on two occasions and who was subsequently convicted, as a result of plea bargaining, of simple possession of drugs. However, in the Maldonado case there was evidence in the form of computer tapes maintained by Maldonado's home computer that Maldonado had been selling drugs for at least and had had a substantial income from selling drugs in a prior year. Also, marijuana, cocaine and drug paraphernalia were also found in Maldonado's home.

Likewise, at the Maldonado hearing, the State produced an undercover agent, Detective Larry Ross, who testified that Maldonado had informed him that he earned One Hundred and Four Thousand Dollars ($104,000.000) selling drugs the previous year. In the subsequent raid of Maldonado's home, the State uncovered evidence that supported the boast of Maldonado's that he earned a substantial income from drug sales. Further, Maldonado did not deny this fact at his hearing, he merely sought to minimize the amount of money he earned as a drug dealer.

Judge Holmes who initially heard the matter concluded that Mr. Maldonado's actual offense was regular and repeated sale of drugs over a period of at least one year during which time he had no other means of support. Judge Holmes further found that during this time, he lived quite well and was motivated entirely be greed.

The facts and circumstances of this case are distinguishable from the Maldonado case. Unlike Maldonado, Mr. Itri did not act to make a profit nor out of greed. As Mr. Itri testified, he had provided the cocaine to one Mr. Snyder at Mr. Snyder's request and came back later to pick up the money for the cocaine with that figure being the same figure Mr. Itri

had, in fact, paid. There was no intent to make a profit. Likewise, there is no evidence in the record to suggest that there was any regular or repeated sales of drugs and during the entire incident, Mr. Itri was working at his job in Atlantic City, which was his primary and main means of support.

The facts and circumstances of the case at bar are also distinguishable from the Davis case. In Davis, the Commission determined that there was a plausible inference from the facts presented that the thefts by Davis were occasioned by greed or, at best, the desire to alleviate personal indebtedness. Again in the case at bar, there is no evidence to suggest greed on the part of Mr. Itri or any desire or effort by him to alleviate personal indebtedness.

In short, whereas Mr. Itri does not seek to minimize the seriousness of the offense for which he was convicted, the circumstances under which that offense and his conduct occurred are distinguishable from the above sited cases and is more indicative of the situation where Mr. Itri had a social or addictive problem which, as will be demonstrated below, he has overcome.

The fourth factor, the date of the offense or conduct, is particularly significant in the case at bar. As can be seen from the uncontroverted facts, the offense to which Mr. Itri now answers, occurred in January of 1986, well over three and a half years ago. The significance of the interval of time has to do with the fact that Mr. Itri has not committed any subsequent offenses of any sort and the fact that the Casino Control Commission has, on prior occasions, explicitly recognized that past transgressions can be overcome by a subsequent interval of time allowing for present fitness under the Act. See, for example, In re Atlantic City Showboat, 10 N.J.A.R. 608, 609-10, 613-14 (1987).

This is particularly important in terms of the finding of rehabilitation. As the Commission pointed out in the case of Division of Gaming Enforcement v. Harris, 11 N.J.A.R. 90, 100 (1983), where sufficient time has elapsed from the date of the offense to the date of Commission action, the lapse in time and other affirmative circumstances may warrant the finding of rehabilitation. It is, Mr. Itri's position in the case are bar, that such circumstances have occurred in this case.

Over three and a half years have elapsed since the date of the offense and it is that lapse of time which is particularly significant in light of the other evidence supporting the fact that Mr. Itri has affirmatively demonstrated rehabilitation in the interim period. As Mr. Itri testified, his arrest in January of 1986 brought home the potenital [sic] seriousness of his involvement with drugs. This social problem that had gradually intensified over the three (3) or four (4) year period preceding his arrest now threatened his livelihood and his ability to support his wife and two (2) young sons. A problem had developed and intensified and the problem had to be addressed and stopped immediately because it now threatened everything Mr. Itri had worked for in terms of

family and career. As can be seen from Mr. Itri's testimony and the character references admitted into evidence as R-1 through R-5, Mr. Itri has been able to overcome the problem.

Factor number five is potentially significant under the circumstances of this case. Mr. Itri will be 37 years of age in October of this year. At the time of his arrest in January 1986 he was 33 years of age. Mr. Itri clearly testified that he has matured a great deal since that time. the seriousness of the arrest and the three and a half (3 1/2) year interval have helped him "grow up" and realize that he must be responsible for all his acts. At 37 it is increasingly difficult to change careers and jobs, especially with a wife and two (2) young children.

Factor six, whether the offense or conduct was an isolated or repeated incident, is again particularly significant. As the facts of this case reveal, Mr. Itri had no prior criminal record before this incident and there has been no subsequent offense or conduct which would impact upon Mr. Itri's character. In fact, as can be seen from the statement of his Probation Officer, she is convinced that there is little likelihood that Mr. Itri will be involved in the criminal justice system again. Likewise, as can be seen from both her statement and the statements of the people involved in the Neighborhood Assistance Program for whom Mr. Itri has performed his community service, Mr. Itri has demonstrated integrity, character, and other positive signs clearly indicating rehabilitation.

Factor number seven is also potentially significant in this case in that as Mr. Itri clearly testified he had fallen into a pattern of behavior one equates with a lifestyle of flash and glitz. Unfortunately, what could be positive social interaction had developed into a problem of social abuse, i.e., drugs had become a part of Mr. Itri's interaction with other people. Mr. Itri realized that he had stumbled onto this unfortunate path and accordingly, he has taken the steps to right himself from that path. It was clear from his testimony that Mr. Itri had become socially addicted to cocaine use. While he may not have been addicted physically, the drug had become a social crutch. It was this addiction that that became necessary for Mr. Itri to overcome.

As to the final factor, factor number eight, again there is clear and convincing evidence of Mr. Itri's rehabilitation. The aforementioned recommendations demonstrate good conduct in the community. As has been indicated, Mr. Itri successfully concluded the counseling which was mandated as part of his sentence. The recommendations also demonstrate a successful participation in the community service program. Finally, as can be seen particularly by Miss Conway and Miss Madrack's recommendations, Mr. Itri has performed well in the programs they have supervised. In short, Mr. Itri has met all of the factors which evidence rehabilitation including the fact that his employment status has not suffered since the time of the incident. This is additional proof of his character and the fact that he realizes the importance his casino license has to his family, including his wife and two young sons. (As to the

significance of this factor, see, Maldonado, supra. at 73). When all of the factors set out in section 90(h) have been evaluated, it is clear that Mr. Itri has affirmatively demonstrated his rehabilitation pursuant to Section 90(h). Again, it is respondent's position that the case fits within the standard announced by the Commission in the Harris decision. As the Commission said in Harris, where sufficient time has elapsed from the date of the incident and the date of the Commission action, the finding of rehabilitation can be made so long as the other factors of Section 90(h) affirmatively demonstrate rehabilitation. As can be seen above, an analysis of those factors affirmatively demonstrates rehabilitation justifying a denial of the Division of Gaming Enforcement's request for the revocation of Mr. Itri's casino employee license. See, for example, Marino v. Division of Gaming Enforcement, 2 N.J.A.R. 176, 183 (1980). [respondent's brief at 6 thru 13]

The Division responds and again I choose to set forth this response in full, that:

. . . In addition, Mr. Itri testified that he has also possessed and used cocaine on the premises of the casino hotel facility where he is employed, and that he has in fact been under the influence of cocaine while working in the position of floorperson. Based upon Mr. Itri's admissions, the Division requests that the court, pursuant to Evid. R. 9, take Judicial Notice that Possession of a Controlled Dangerous Substance is an offense under N.J.S.A. 2C:35-10, and that the Commission has found that his offense to be inimical to the policies of the Act, pursuant to Section 86(c)(2) of the Casino Control Act. Accordingly, if the court finds that Mr. Itri is not rehabilitated from the disqualifying offense pursuant to Section 86(c)(1) of the Act, and that he does not possess the requisite good character, honesty and integrity required for licensure, then the court must also find that he is disqualified pursuant to Section 86(c)(2) of the Casino Control Act, pursuant to Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985).

In an attempt to establish his rehabilitation and good character, honesty and integrity, Mr. Itri has provided four statements from individuals associated with the Neighborhood Assistance Program and a letter from his probation officer. From the hearsay submitted, it appears that Mr. Itri is performing his duties well in this program, that he gets along with the people who participate in the program, and he is in compliance with his probation. However, it should be noted, that Ethel M. DeRobertis states that she is not aware of the reason that brought Mr. Itri to the program. The hearsay submitted by Mr. Itri indicates, at most, that he is in compliance to date with the terms of his probation, which require 300 hours of community service over five years. However, the question before the court is whether or not Mr. Itri has established by clear and convincing evidence that he is rehabilitated from the disqualifying offense, whether his continued licensure would be inimical to the policies of the

> Casino Control Act, and whether he possesses the good character, honesty and integrity required for licensure. It is the Division's position that Mr. Itri's testimony, and the statements submitted on his behalf simply do not meet the standard set forth in the Casino Control Act. Mr. Itri, by his own admission, has distributed Controlled Dangerous Substance, in particular cocaine, to friends, and on January 24, 1986, he provided approximately 1/8 of an ounce of cocaine to a George Snyder. Although the reason that he provided the cocaine to Mr. Snyder was in dispute at the hearing, what is not in dispute is that Mr. Itri did commit the act of distribution of cocaine and on more than one occasion. In addition, Mr. Itri has admitted that on more than one occasion he has accepted cocaine from patrons and used the cocaine on the premises of the casino/hotel facility where he is employed. This conduct is particularly disturbing when it is committed by a person in a position requiring extensive contact with casino patrons and who is responsible for supervision of games. It should also be noted that Mr. Itri is scheduled to remain on probation until November 1991, that his work with the Neighborhood Assistance Program is one of the court ordered conditions of his probation and that he has yet to complete another 120 hours of community service pursuant to that order. Considering the seriousness of Mr. Itri's conviction and the extent of his probation it is too soon to conclude that he is rehabilitated. It addition, the Honorable Judge I Steinberg's statement of reasons appended to Exhibit P4 in evidence indicate his recognition of the seriousness of Mr. Itri's conduct and his dissatisfaction with the plea bargain agreement entered into while the case was on another Judge's list despite the fact that this was Mr. Itri's first offense. In addition, Judge Steinberg noted under aggravating factors, also appended to this Exhibit, that there is the risk the defendant will commit another offense and that there is a substantial likelihood he is involved in organized criminal activity. Taken together, it is apparent that based on the evidence presented, Mr. Itri has not met his burden of proof on the issues of rehabilitation and good character, honesty and integrity.
>
> Accordingly, the Division urges the court to conclude that Mr. Itri's casino employee license be revoked. [Division's brief; emphasis added]

Respondent's brief is limited to the issue of whether the respondent has demonstrated rehabilitation under 90(h), and does not expressly address the question of whether he is proven by clear and convincing evidence his good character, honesty and integrity. In effect, though, under the recent Appellate Division decision in the matter of *Dunston v. Division of Gaming Enforcement* (Decided April 10, 1990), A-197-89T3, where a licensee is found to be rehabilitated from the disqualifying offense, and "[w]here the conduct under §86 and the contrary demonstration under 90(b) are all part of the same transaction and constitute a single res jestae, it would, in our view, contribute the statutory

intendment to insist that while the §86 conduct can be overcome by rehabilitation, the circumstances surrounding the conduct cannot be. In that case, no one would ever be eligible for rehabilitation relief. Proof of petitioner's good character, honesty and integrity thus lies in her entire unblemished work history apart from this one episode and its surrounding circumstances. . . ." [Decision at 10-11] Thus the question of disqualification and good character, honesty and integrity both turn on the factors of rehabilitation.

As to rehabilitation under 90(h), respondent's duties and responsibilities as a casino floor person are sensitive ones at the heart of the gaming operation, and involve much patron contact. The offense of distribution of cocaine is at the core of the circulation of an illegal and dangerous drugs in the United States. Even though Mr. Itri may not have profited from this particular distribution of drugs, he admits that he expected to be paid for those drugs, even if only at cost to him. That fact that he was not out to make a profit on this occasion is not particularly mitigating, because of the fact that he was to have additional contacts with Mr. Snyder for the purpose of selling more cocaine. It may be that he was just sharing with his friends and acquaintances the bounty of cocaine purchased by him, but he did charge Mr. Snyder for the drugs and had no particular long standing friendship with that individual, to support his claim of mere generosity. Lack of actual profit is somewhat mitigating in the abstract, but not particularly in compelling in this case, given the fact that Itri charged Snyder and was going to charge him additional cost of cocaine of future occasions. This is dealing and distribution of a controlled dangerous substance, and Itri admitted this by pleading guilty.

The circumstances of the offense thus indicate that Itri was engaged in business transactions of distribution, even if not for profit at that point, and intended to develop further business relationship with Snyder, which might also have the social incident of "parting" but cannot be fairly described as a strictly social arrangement. At the time of this offense, respondent was not addicted to cocaine, although he was experiencing problems with that drug and alcohol. This case may be, as the respondent argues distinguishable from the matters of *Davis v. Division of Gaming Enforcement,* 8 *N.J.A.R.* 301 (1985) and *Division of Gaming Enforcement v. Maldonado,* 10 *N.J.A.R.* 69 (1987) in that it does not contain either a key casino employee license, or a strong element of greed and profit, but these elements alone are not dispositive, though they may be distinguishable.

Respondent stresses the date of the offense, which occurred in January 1986, well over three and one half (3 1/2) years ago and this not a negligible period of time. However, this passage of time after the criminal charges and good conduct in probation and on the job, most also be weighed against the serious nature of the distribution offense, as well as the compounding aspect in this case of the respondent's free and open admission during the hearing that he used cocaine on seven or eight occasions on the casino premises, some of which was provided by casino patrons for his use. This entirely unacceptable behavior must be weighted, along with the serious nature of the distribution offense, against Mr. Itri's claim of rehabilitation in the last 3 1/2 years. He is now 37 years of age, and has two young children and a spouse to support. There is, certainly evidence that he has matured a great deal since 1986, when he was convicted of distributing cocaine and also admitted to using the drug on a number of occasions on casino premises, often in the form of gifts from patrons.

Respondent argues that the 1986 distribution offense was an isolated incident not likely to be repeated, and that he has had no subsequent offenses and conduct involving possession or distribution of cocaine. Itri's offense was isolated in the sense that he was convicted of distributing cocaine on only one occasion, but it is evident from the facts introduced by the Division, heresay though they may be, that he intended to distribute cocaine to Snyder on more than one occasion and expected to receive payment in return, even if only to cover his cost. Thus the offense and conduct was not truly isolated and has more of the character of a repeated transaction. Respondent's drug use on casino premises was also repeated on a number of occasions.

Mr. Itri cites no social conditions contributing to his problems of drug abuse beyond the "flash and glitz" of the casino industry in Atlantic City, as well as some of the demands and stress, of the business which caused him to become "socially addicted" to cocaine use. [respondent's brief at 12] Respondent claims the drugs had become a part of his interaction with other people and "social crutch," The Division does not dispute this claim, but argues that it has shown evidence that respondent was regularly in the business of dealing drugsand, further, that he was in the habit of using drugs, regardless of the setting of circumstances, even to the extent of accepting it from patrons and using it on casino premises. This is the most troubling aspect of respondent's conduct. In fact, if not for the respondent's admitted use on casino premises, this might be an easier case for finding rehabilitation, in contrast to the Commissioner's decision in the *Davis* and

Maldonado matters. It is plausible that his offense of giving drugs to Snyder, for which he was paid only for his cost, was essentially a social transaction, even though the two were not friends.

On the basis of the nature of the offense, and absence of any evidence that he was regularly engaged in drug dealing for profit, (although he frequently exchanged drugs for money for more social purposes), and in light of the evidence presented of his efforts toward rehabilitation and increasing maturity, I **CONCLUDE** that he has shown rehabilitation within the meaning of 90(h) from the disqualifying offense of distribution of cocaine in 1986.

However, the Commission's inquiry does not end there; there remains an issue of whether, considering all of the evidence and all of these factors of rehabilitation, the licensee has proven by clear and convincing evidence his good character, honesty and integrity. Given the evidence of rehabilitation, I **CONCLUDE** that the 1986 distribution offense does not disqualify his from licensure. But, at the hearing, he offered further evidence as to use of cocaine on casino premises on seven or eight occasions, sometimes after being offered the drug by patrons, and, though he was never criminally charged with that conduct, which apparently came to light only at the hearing, it must be considered by the Commission in assessing his rehabilitation in the context of inimicality under *N.J.S.A.* 5:12-86(c)(2), as well as the requirement that he show good character, honesty and integrity.

Conduct of use of cocaine on casino premises by a casino employee licensee particularly when aided or betted by casino patrons, is inimical to the policies of the Casino Control Act and to casino operations and therefore is also disqualifying under *N.J.S.A.* 5:12-86c(2), as the Division suggest. Under the *Davis* case, and with a reasonable and fair reading of the Casino Control Act, the factors of rehabilitation are implicitly part of the consideration of whether conduct is inimical under *N.J.S.A.* 5:12-86(c)(2), even if rehabilitation is not expressly applicable. Respondent makes no express argument as to inimicality and does not address the issue raised by his admission of drug use and acceptance of drugs of casino patrons. The nature of his duties during this conduct, were that of a floor person as discussed above. The nature of the conduct of using cocaine on casino premises and accepting it from patrons for that purpose, constitutes illegal activities by casino employees on casino premises and is further compounded by the acceptance of controlled dangerous substance from casino patrons by this casino licensee. Respondent also concedes that he used cocaine while working on the casino floor, not merely after hours or in

his own free recreational time, but as something to help him function on the job. This also is a severely aggravating factor. This conduct of on premises drug abuse by the respondent occurred when he was 33 years of age, which is not a tender age, and was repeated on at least seven or eight occasions, some of which involved casino patrons. Respondent, though denying that he was a cocaine addict, did admit that "he had to have" the drug and went to some lengths to do so. He cites no social conditions, beyond the particular and stressful nature of the casino industry to justify his on-casino premises drug use. While his compliance with the terms of probation has been full and law-abiding in all respects and though he claims that he has stopped his use of cocaine, (which the Division does not dispute), I **CONCLUDE** that his conduct in using cocaine on casino premises and accepting it for use from patrons on a number of occasions as discussed above renders his licensure inimical within the meaning of *N.J.S.A.* 5:12-86c(2).

Also applying these factors of rehabilitation to consideration of whether respondent has satisfied his burden of proof under *N.J.S.A.* 5:12-89 (b)(2), 90(b), I **CONCLUDE** that he has, because of the nature of his conduct of drug abuse on casino premises, which was repeated and involved patrons, has failed to show the requisite good character, honesty and integrity to continue to hold a casino employee license.

Order

On the basis of the above, it is **ORDERED** that the casino employee license of respondent John L. Itri, Jr., be revoked by the Casino Control Commission.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

6.28.90
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

6-29-90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 0 3 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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List of Exhibits

For Petitioner:

P-1	Winslow Township Police Department Operation Report
P-2	Winslow Township Police Department Arrest Report
P-3	Indictment number 0799-04-86
P-4	Judgment and Conviction
P-5	Transcript of Plea Retraction dated October 6, 1986
P-6	Lavatory Report
P-7	Office of Administrative Law transcript of hearing
P-8	Not admitted
P-9-12	Unidentified and not admitted

For Respondent:

R-1	Statement of Erin Conway, Camden County Probation Officer
R-2	Letter of Cheryl A. Madrack
R-3	Letter of Rita Scarpado
R-4	Letter of Goldie ?
R-5	Letter of recommendation Ethel DeRobertis

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-443
LICENSE NO. 016475-21
OAL DOCKET NO. CCC 07306-89
ORDER NO. 90-31-7

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

Complainant,

v.

DAYTON F. JAMES, JR.,

Respondent.

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; and the Commission having considered the entire record of these proceedings at its public meeting of August 1, 1990,

IT IS on this 9th day of August 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the Commission's order of July 21, 1987, suspending the respondent's casino employee license is vacated; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly DB
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7306-89
AGENCY DKT. NO. 87-443

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
DAYTON JAMES,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for the petitoner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Dayton James, the respondent, pro se

Record Closed: June 1, 1990 **Decided:** June 20, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Dayton James's casino employee license no. 16475-21, pursuant to N.J.S.A. 5:12-90 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's license by reason of its contention that the respondent had committed a criminal offense which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4) (now section 86c(2)), by means of

section 86g, and that therefore, he lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

The respondent had obtained a casino employee license from the Commission so he could be employed as a blackjack dealer in the casino industry. By complaint to the Commission, filed June 25, 1987, the Division objected to the respondent's continued licensure, asserting that the respondent had committed the offense of attempt to commit theft by deception, in violation of N.J.S.A. 2C:20-3 and N.J.S.A. 2C:5-1, which is a disqualifying offense under section 86c(4) (now section 86c(2)), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89b(2). Based upon the complaint, the Commission notified the respondent on July 2, 1987 that he had the right to a hearing, and that failure to respond within 15 days could result in his license being revoked. By application dated September 20, 1989, which was received by the Commission on September 20, 1989, the respondent requested a hearing. On September 21, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on September 26, 1989, 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 in the matter was held before Administrative Law Judge Edgar R. Holmes on January 19, 1990. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he is alleged to have committed a violation of N.J.S.A. 2C:20-3 and 5-1, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

B. Whether respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

C. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on June 1, 1990, in the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

In March of 1987, the respondent was employed as a blackjack dealer at the Atlantis Hotel and Casino. On the morning of March 17, 1987, the respondent cashed his paycheck in the amount of $240.23 at the Midlantic Bank. He then went to work at the casino. The respondent placed his money inside his jacket, placed the jacket inside his garment bag, and secured the garment bag inside his locker at the casino.

After completing his shift, the respondent discovered that his locker and garment bag had been broken into and that his money had been stolen. He reported the theft to the hotel security department; however, instead of reporting that his money had been stolen, he reported that his paycheck had been stolen. He thereafter attempted to have the Atlantis payroll department reissue the check.

On March 20, 1987, the respondent was arrested for attempted theft by deception, in violation of N.J.S.A. 2C:20-3 and N.J.S.A. 2C:5-1. At that time, he admitted to the police that it was his money that had been stolen and not the paycheck (P-3). At the hearing, the respondent attempted to explain that what he meant by saying that his paycheck had been stolen was that the money from his paycheck had been stolen. He considered the money and the check to be one in the same. He wanted another paycheck to replace the payroll money that had been stolen as he had bills to pay.

On March 20, 1987, a complaint was issued in the Atlantic City Municipal Court charging the respondent with attempted theft by deception in violation of N.J.S.A. 2C:5-1. The arresting officer advised the respondent to plead guilty to the charge and opined that if the respondent did so, his casino employee license would not be taken. Based upon this advice, on September 17, 1987, the respondent pleaded guilty to the charge in the Atlantic City Municipal Court and was sentenced to pay $25 in court costs and a $30 Violent Crimes Compensation Board penalty. He was not otherwise fined or even placed on probation (P-1).

The respondent was raised in Brooklyn, New York, by his mother and father, along with a brother and a sister. When respondent was 12, the family moved to Atlantic City. The respondent attended Atlantic City High School through the twelfth grade; however, he did not graduate. The respondent played basketball in high school. The respondent is a member of the Second Baptist Church, and attended Atlantic County Vocational Technical School for one year studying cosmetology.

The respondent worked in the casino industry as a blackjack dealer for eight years without incident. From 1979 through 1981, he worked at Resorts International Hotel and Casino; from 1982 through 1984, he worked at Harrah's Marina Hotel and Casino; from 1984 through 1986, he worked at the Tropicana Hotel and Casino, and from 1986 through March 1987, he worked at the Atlantis Hotel and Casino. He was terminated from his position at the Atlantis because of the check incident. He thereafter worked at the Showboat Casino Hotel and Bowling Center until his casino employee license was suspended by the Commission. He has worked various jobs since leaving the casino industry including part-time jobs at Bradlee's Department Store and Touch and Go Maintenance; however, he is presently unemployed.

The respondent submitted four copies of a form letter signed by individuals attesting to his honesty and loyalty and his proficiency as a blackjack dealer. He also submitted a petition signed by 11 individuals which he represented as attesting to the same facts as contained in the form letter (R-1 through R-5).

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the respondent testified truthfully. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony.

FINDINGS OF FACT

1. In March of 1987, the respondent was employed as a blackjack dealer at the Atlantis Hotel and Casino.

2. On the morning of March 17, 1987, the respondent cashed his paycheck in the amount of $240.23 at the Midlantic Bank. He then went to work at the casino. The respondent placed his money inside his jacket, placed the jacket inside his garment bag, and secured the garment bag inside his locker at the casino.

3. After completing his shift, the respondent discovered that his locker and garment bag had been broken into and that his money had been stolen.

4. He reported the theft to the hotel security department; however, instead of reporting that his money had been stolen, he reported that his paycheck had been stolen.

5. He thereafter attempted to have the Atlantis payroll department reissue the allegedly stolen check.

6. On March 20, 1987, the respondent was arrested for attempted theft by deception, in violation of N.J.S.A. 2C:20-3 and N.J.S.A. 2C:5-1.

7. On March 20, 1987, a complaint was issued in the Atlantic City Municipal Court charging the respondent with attempted theft by deception in violation of N.J.S.A. 2C:5-1. On September 17, 1987, the respondent pleaded guilty to the charge in the Atlantic City Municipal Court and was sentenced to pay a $25 in court costs and a $30 Violent Crimes Compensation Board penalty. He was not otherwise fined or even placed on probation.

8. The respondent was raised in Brooklyn, New York, by his mother and father, along with a brother and a sister. When respondent was 12, the family moved to Atlantic City.

9. The respondent attended Atlantic City High School through the twelfth grade; however, he did not graduate. The respondent played basketball in high school.

10. The respondent is a member of the Second Baptist Church, and attended Atlantic County Vocational Technical School for one year studying cosmetology.

11. The respondent worked in the casino industry as a blackjack dealer for eight years without incident. From 1979 through 1981, he worked at Resorts International Hotel and Casino; from 1982 through 1984, he worked at Harrah's Marina Hotel and Casino; from 1984 through 1986, he worked at the Tropicana Hotel and Casino, and from 1986 through March 1987, he worked at the Atlantis Hotel and Casino. He was terminated from his position at the Atlantis because of the check incident. He thereafter worked at the Showboat Casino Hotel and Bowling Center until his casino employee license was suspended by the Commission.

12. The respondent has worked various jobs since leaving the casino industry including part-time jobs at Bradlee's Department Store and Touch and Go Maintenance; however, he is presently unemployed.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> . . . .
>
> (2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino

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operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10 year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing;

. . . .

g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letter of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino

enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

e. 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.

. . . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Casino Control act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." N.J.S.A. 5:12-129(1) provides for the revocation of 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 contended originally, by means of section 86g, that the respondent committed a violation of N.J.S.A. 2C:5-1, attempted theft by deception, which constitutes a violation of N.J.S.A. 5:12-86c(4) (now section 86c(2)), and that, accordingly, he is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g

Section 86g provides that a licensee or registrant will be disqualified from licensure and registration because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(4) of the Act (now section 86c(2)) is more commonly referred to as the "inimical clause." At the time the Division's complaint was filed, the respondent had not yet been convicted, and therefore, the Division filed its complaint pursuant to section 86g. Since that time, however, the respondent has been convicted of the offense in the Atlantic City Municipal Court, and therefore, the Division need not go forward in the matter pursuant to section 86g. 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 criteria

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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 casino operations," 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 in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(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."

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif. den., 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to

the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that while the respondent was only convicted of a crime of the fourth degree, which is not listed as a disqualifier under section 86c (1), the respondent's conduct constituted an attempted theft from the casino. This alleged offense is not listed as a disqualifier under section 86c(1); as such, the Division asserts that this alleged offense is a disqualifying offense under section 86c(4) (now section 86c(2)).

N.J.S.A. 2C:20-3, Theft by unlawful taking or disposition, provides in pertinent part:

> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

N.J.S.A. 2C:5-1, Criminal attempt, provides in pertinent part:

> a. Definition of attempt. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:
>
> (1) Purposely engages in conduct which would constitute the crime if the attendant circumstances were as a reasonable person would believe them to be;
>
> (2) When causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing such result without further conduct on his part; or
>
> (3) Purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

In this case, the Division established, and the respondent admitted, that he had been convicted in the Atlantic City Municipal Court of attempted theft by deception. After having been the victim of a theft, the respondent falsely represented that his paycheck had been stolen rather than the cash from his paycheck, and he wrongfully attempted to have his casino employer issue a new payroll check to him. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct

constitutes a violation of N.J.S.A. 2C:5-1. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:5-4 and N.J.S.A. 2C:20-2b(3), the offense constitutes a crime of the fourth degree.

In State of New Jersey, Dept. of Law and Public Safety, Division of Gaming Enforcement v. Michael P. Waters, OAL DKT. CCC 3933-86 (Jan. 7, 1987), modified, Casino Control Commission (June 12, 1987), the Commission stated at 2-3 that:

> A distinction must be drawn between rehabilitation from a section 86(c)(1) or (3) disqualifying offense pursuant to sections 90(h) or 91(d) of the Act and rehabilitation as an aspect of the inimical analysis. In the former situation, disqualification is established once it is shown that the respondent committed an enumerated offense. The respondent is then afforded the opportunity to affirmatively demonstrate his rehabilitation from that disqualification. It is well established that, consistent with other affirmative licensing criteria, the respondent must prove his rehabilitation by clear and convincing evidence. Application of Richard Romanishin for a Casino Employee License, Docket No. 84-EA-85 (Commission order, May 23, 1985); Application of Chester R. Brathwaite for a Casino Employee License, Docket No. A-4252-82T3 (unpublished opinion reversing Commission decision, January 23, 1984).
>
> However, unlike a section 86(c)(1) or (3) situation, disqualification pursuant to section 86(c)(4) is not established upon demonstrating that the respondent committed the offense in question. Such a determination can only be made after considering all the circumstances surrounding the offense: its nature, its remoteness, and the offender's conduct subsequent to the offense, i.e., essentially the same factors which bear upon rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Commission decision, December 27, 1985); State v. Theodore Williams, Docket No. 84-288 (Commission order, May 1, 1987).

The Commission concluded that if the Division establishes a case for the respondent's disqualification, it is "then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof), had shifted."

In the Davis case, the Commission stated at 313-314:

> 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 rehabilitation 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.

The Commission indicated that "it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis [and] . . . the inimical analysis is substantially similar to the concept of rehabilitation." The Commission concluded that:

> 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). [Id. at 314] [footnote omitted]

The eight specific criteria enumerated in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d to be evaluated when a determination of rehabilitation is to be made are:

1. The nature and duties of the licensee's position or 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 licensee or 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 applicant or registrant under their supervision.

In regard to the first criterion, Dayton James is a casino licensee and was employed as a blackjack dealer. As such, he does have direct responsibilities for actual gaming activities and does come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:5-1, attempted theft by deception, on one occasion while employed in the casino industry. Because the offense was committed against his casino employer, it is serious.

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Third, the seriousness of the offense must be viewed in its appropriate context. There are both mitigating and aggravating factors in this case. The respondent was a victim of the theft of his payroll money from his locker while working in the casino. Instead of reporting the cash had been stolen, he reported that his paycheck had been stolen, and he attempted to have the casino issue him a new paycheck. The sentencing court obviously did not consider this to be a very serious offense as the respondent was only ordered to pay court costs and a Violent Crimes Compensation Board penalty.

Fourth, the respondent's misconduct occurred in March of 1987, when it ceased.

Fifth, the respondent is presently 30 years old and was 27 years old at the time of the offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was isolated in nature. He has not committed any other violations of the criminal laws.

Seventh, the respondent had been the victim of a theft. Since it was his payroll money that had been stolen, and had been stolen from his employee's locker while he had been working, he wanted a little help in order to pay his bills. At the time, the respondent did not think of his actions as the commission of a theft.

Eighth, the respondent now recognizes that what he did was wrong. He is remorseful and feels stupid because of what he did. He feels he has been punished, and has learned his lesson. He worked in the casino industry for eight years without incident. Numerous co-workers have attested to the respondent's abilities as a blackjack dealer and to his honesty and loyalty.

When considering the respondent's conduct as taken in context and the overall nature of his character, I do not find that the respondent's attempt to have a new payroll check issued to him after his money had been stolen sufficient to establish that the continued licensure of the respondent is inimical to the policies of the Casino Control Act.

In Division of Gaming Enforcement v. Wynette Harris, the administrative law judge hearing the case recommended that the respondent's license be suspended

for three years. The Commission's final decision modified the initial decision of the administrative law judge by substituting the penalty of revocation instead of the administrative law judge's recommended three-year suspension. This action was based on its belief that it was not empowered to impose a penalty less than revocation. On appeal, the Superior Court Appellate Division stated that:

> The other question is whether the Commission correctly conceived that it was not authorized to impose a suspension rather than a revocation. It is clear to us that the Commission acted on the understanding that it was limited to the alternatives of withholding penalty entirely or imposing a revocation. The governing statute, N.J.S.A. 5:12-129, provides that after appropriate hearings and factual determination the Commission shall "have the authority" to impose a number of specified sanctions. Included among these is the revocation of a license or registration of any person for the conviction of any criminal offense. In our view, the authority to impose a revocation implies the authority to withhold such revocation and impose instead a suspension for a designated period.

Division of Gaming Enforcement v. Harris (N.J. App. Div., Mar. 1, 1983, A-3774-81T2) (unreported), at 4. The court then remanded the case to the Commission for reconsideration as to penalty.

On remand, the Commission acknowledged that it had the authority to suspend rather than revoke. It ruled, however, that suspension of a license is singularly inappropriate when a disqualifying offense is involved. Rather, revocation is the only appropriate sanction when a disqualifying offense under section 86 is established. Revocation must follow disqualification unless there is a finding of rehabilitation under sections 90(h) and 91(d) or, in the case of a casino hotel employee, a waiver is granted pursuant to section 91(e). Persons convicted of disqualifying offenses, unless rehabilitated or granted a waiver, are not suitable for employment in the casino industry. If the proscribed activity falls short of a disqualifying offense, the Commission may reconsider suspension. Division of Gaming Enforcement v. Harris, 11 N.J.A.R. 90, 98 (1983). In Harris, the Commission discussed revocation of licenses of persons "convicted of a disqualifying offense." This language usually refers to convictions for offenses listed as a statutory disqualifier in section 86c(1).

While the Harris case dealt with a section 86c(1) disqualification, the logic employed by the Commission could be applicable to a section 86c(2) inimical disqualification. Such an all-or-nothing analysis sometimes could work an unjust result. In a case such as the one presently before the Commission, the misconduct, after considering the Davis factors, does not rise to the level of being inimical

to the policies of the Casino Control Act. As such, revocation does not seem to be appropriate. Yet, the misconduct did directly involve the casino and should be sanctioned. This is the type of case in which I would recommend that the Commission consider imposing an administrative suspension of the respondent's license pursuant to sections 129 and 130. The Commission should have the flexibility to assess penalties appropriate to the misconduct based upon the facts in a given case. In cases such as this, where the misconduct does not rise to the level of being inimical to the policies of the Act, but the misconduct involves the casino or relates directly to gaming activity, the Commission should be able to impose appropriate penalties or sanctions less than revocation. I would also invite the Commission to consider whether or not a suspension could be imposed instead of a revocation if the respondent's conduct was found to be inimical to the policies of the Casino Control Act.

I **CONCLUDE** that the Division has not 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) (now section 86c(2)) or pursuant to section 86c(4) (now section 86c(2)), by means of section 86g.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. James was required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the respondent's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve the performance of his licensed employment, but did involve his employer, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the respondent has fully accepted responsibility for his misconduct, regained control over his behavior, performed admirably within the casino industry prior to the incident, and is remorseful. Accordingly, the respondent presents no risk to the public nor to the integrity of the gaming industry in this State. The respondent has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. James is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the respondent has established by clear and convincing evidence his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE.**

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 20, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

6/22/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 27 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-98
APPLICATION NO. 016913-21
OAL DOCKET NO. CCC 07956-89
ORDER NO. 90-36-9

RENEWAL APPLICATION OF
LOUVENIA JAMES

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 September 12, 1990,

IT IS on this 26th day of September 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the renewal application of Louvenia James is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7956-89

AGENCY DKT. NO. 90-EA-98

LOUVENIA JAMES,

Petitioner,

v.

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

Respondent.

Louvenia James, the petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for the respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: July 5, 1990 Decided: August 9, 1990

BEFORE **STEVEN L. CARNES, ALJ:**

STATEMENT OF THE CASE

The petitioner, Louvenia James, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (blackjack dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, she lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so she could be employed as an income control clerk at Trump's Castle Hotel and Casino.[1] By letter to the Commission, dated August 28, 1989, the Division objected to the petitioner's application for licensure as a blackjack dealer, asserting that the petitioner had committed the offense of theft by deception in violation of N.J.S.A. 2C:20-4 (third degree), which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89(b)2. Based upon report, the Commission notified the petitioner on September 25, 1989 that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated October 2, 1989, which was received by the Commission on October 5, 1989, the petitioner requested a hearing. On October 10, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on October 18, 1989, 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 in the matter was held before me on February 8, 1990. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, theft by deception.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, purusant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

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[1] The highest credential the petitioner holds is that of a blackjack dealer; however, she has never held a position as a dealer.

c. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on July 5, 1990, at the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record closed.

FACTUAL DISCUSSION

On August 7, 1980, the petitioner obtained a gaming license from the Commission, and she became employed as a pit clerk at Harrah's Marina Hotel and Casino. In late summer or early fall of 1981, the petitioner left her position at Harrah's and accepted the same position at the Playboy Hotel and Casino. After only several months there was a lay-off. Since the petitioner was one of the employees last hired, she was one of the first employees to be laid-off.

On December 2, 1981, the petitioner filed a claim for unemployment benefits (R-1, R-2, R-3, R-5, R-6). The petitioner was found to be eligible to receive unemployment benefits in the amount of $133 per week (R-1). In late January 1982, the petitioner was recalled to work at the Playboy. She returned to work on January 26, 1982 (R-1).

The petitioner received her first unemployment check on January 26, 1982. As such, she had not received any income in nearly two months. At that time she was a 24-year-old single mother of three children. She borrowed money from her sister and friends in order to pay rent, utility and food bills. Her overriding concern was to provide food and shelter for her children. As she had incurred substantial debt in the previous two months, she did not tell her local unemployment office that she returned to work. Instead, she continued collecting unemployment benefits until she voluntarily stopped collecting benefits in the week of March 16, 1982. The petitioner used these continued benefits to pay off bills she incurred and the loans she received while unemployed.

The petitioner collected unemployment benefits for eight weeks while still employed at Playboy (R-1, R-5, R-6). During this period the petitioner earned $1,587.00 at Playboy (R-1 & R-6). Because the petitioner failed to notify her local unemployment office of her employment, she received unemployment benefits to which she was not

entitled in the amount of $1,064.00 (R-2, R-5 & R-6).

On April 17, 1984, the Department of Labor (Department) notified the petitioner that it would be conducting a hearing on April 26, 1984, concerning the unemployment benefits she had received from January 20, 1982 through March 16, 1982, while petitioner had been employed (R-3). The petitioner did not attend the hearing. The Department of Labor thereafter made a determination that the petitioner had received unemployment benefits in the amount of $1,064.00, which she was not entitled to receive, and it imposed a fine of $266 for a total claim of $1,330 (R-2).

Over the next several years, the petitioner's State income tax return checks were withheld by the State and applied to her outstanding debt for unemployment benefits. The petitioner made no other attempt to repay this debt. After being contacted by the Division in March 1989 concerning her license renewal application, the petitioner contacted the Division of Unemployment and Disability Insurance, and she entered into a repayment agreement of $25 per week. From April 1989 through March 1990, the petitioner made payments pursuant to this agreement (P-1). In March or April 1990, the petitioner changed from being a cage cashier to being an income control clerk. This resulted in her receiving a cut in salary. She therefore wrote to the Division of Unemployment and Disability Insurance and requested that her repayment agreement be reduced to $15 per week. She has not yet received a response from the Division of Unemployment and Disability Insurance.

The petitioner is 33 years of age, and she was 24 years of age at the time she collected unemployment benefits. She was raised by her mother along with her ten brothers and sisters. The family moved to Atlantic City when the petitioner was 13 years old. She left high school in the eleventh grade because she became pregnant. She is now a single parent raising three children. She is an active member of the New Hope Baptist Church where she serves as the Assistant Director of the Youth Department.

The petitioner has been employed in the casino industry for nearly ten years. She first became employed as a pit clerk at Harrahs in 1980. She left Harrahs in 1981 to accept the same position at Playboy. After being laid-off and her return in January 1982, the petitioner became a cage cashier at Playboy. On March 20, 1985, the petitioner left her employment at Playboy and accepted a position as a cage cashier at Trump's Castle

Hotel and Casino. In March or April 1990, the petitioner changed jobs at Trump's Castle and she became an income control clerk. This change in position resulted in a pay cut; however, the petitioner changed positions in order to achieve more stable hours of employment so she could spend more time raising her family. In the petitioner's view, she needs to be at home with her teenage children in order to properly raise them.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that her misconduct was, in part, due to immaturity. I am also inclined to believe that it was the result of inexperience and the difficulty in dealing with her financial and family affairs. At the time the petitioner obtained the job and failed to disclose this fact to her local unemployment office, she was in a difficult living arrangement. She was a single parent responsible for raising three children and her only concern was to provide food and shelter for her children.

FINDINGS OF FACT

1. In the late fall of 1981, the petitioner was laid-off from her position as a pit clerk at the Playboy Hotel and Casino.

2. On December 2, 1981, the petitioner filed a claim for unemployment benefits. The petitioner was found to be eligible to receive unemployment benefits in the amount of $133 per week.

3. In late January 1982, the petitioner was recalled to work at Playboy. She returned to work on January 26, 1982.

4. The petitioner received her first unemployment check on January 26, 1982. As such, she had not received any income in nearly two months.

5. At that time she was a 24-year-old single mother of three children. She borrowed money from her sister and friends in order to pay her rent, utility and food bills. Her overriding concern was to provide food and shelter for her children.

6. The petitioner collected unemployment benefits for eight weeks, January 20, 1982 through March 16, 1982, while still employed at Playboy. During this period the petitioner earned $1,587.00 at Playboy.

7. Because the petitioner failed to notify her local unemployment office of her employment, she received unemployment benefits to which she was not entitled in the amount of $1,064.00.

8. On April 17, 1984, the Department of Labor notified the petitioner that it would be conducting a hearing on August 26, 1984, concerning the unemployment benefits she had received from January 20, 1982 through March 16, 1982, while the petitioner had been employed.

9. The Department of Labor made a determination that the petitioner had received unemployment benefits in the amount of $1,064.00, which she was not entitled to receive, and it imposed a fine of $266 for a total claim of $1,330.

10. The petitioner used these continued benefits to pay off bills she incurred and the loans she received while unemployed.

11. Over the next several years, the petitioner's State income tax return checks were withheld by the State and applied to her outstanding debt for unemployment benefits. After being contacted by the Division in March 1989 concerning her license renewal application, the petitioner contacted the Division of Unemployment and Disability Insurance, and she entered into a repayment agreement of $25 per week.

12. From April 1989 through March 1990, the petitioner made payments pursuant to this agreement.

13. In March or April 1990, the petitioner changed from being a cage cashier to being an income control clerk. This resulted in her receiving a cut in salary. She therefore wrote the Division of Unemployment and Disability Insurance and requested that her repayment agreement be reduced to $15 per week.

14. The petitioner is 33 years of age. She was raised by her mother along with her ten brothers and sisters.

15. The family moved to Atlantic City when the petitioner was 13 years old. She left high school in the eleventh grade because she became pregnant. She is now a single parent raising three children.

16. She is an active member of the New Hope Baptist Church where she serves as the Assistant Director of the Youth Department.

17. The petitioner has been employed in the casino industry for nearly ten years. She first became employed as a pit clerk at Harrah's in 1980. She left Harrah's in 1981 to accept the same position at Playboy. After being laid-off and her return in January 1982, the petitioner became a cage cashier at Playboy.

18. On March 20, 1985, the petitioner left her employment at Playboy and accepted a position as a cage cashier at Trump's Castle Hotel and Casino. In March or April of 1990, the petitioner changed jobs at Trump's Castle and she became an income control clerk.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:

a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

. . .

c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

(1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . .

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal govenment, of this State or of any other state, jurisdiction, province or country.

> In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

> a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
>
> b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisifed by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.
>
> . . .
>
> e. 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.
>
> . . .

h. Nothwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception, which constitutes a violation of section 86c(1), and that, accordingly, she is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends, by means of section 86g, that the petitioner's receipt of unemployment benefits while she was employed at Playboy constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:20-4, Theft by deception, provides:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

This statute has been held applicable where one wrongfully receives unemployment benefits. In State v. Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

> As we read the trial judge's findings, defendant knowlingly misrepresented his employment status to obtain money "under pretense that he is...out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.[2] It is not necessary to prove a "corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super, 137, 141-143 (App. Div.) certif. den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked - or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

The Division established, and the petitioner admitted during her testimony, that she knowlingly received unemployment benefits to which she was not entitled from the Department of Labor. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

(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 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:

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[2] N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

1. The nature and duties of the position applied for;

2. The nature and seriousness of the offense or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

5. The age of the applicant when the offense or conduct was committed;

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

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

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.

First, Ms. James is a casino employee. While she does hold a blackjack dealer credential, she has never been employed as a dealer. She is presently a non-gaming casino employee and is employed as an income control clerk. She works in an office and reviews the accuracy of paperwork. As such, she does not have direct responsibilities for actual gaming activities, and she does not have contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by deception - third degree, over an eight-week period during which she was employed in the industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. The petitioner was a young, unemployed, single parent of three children. She had not received a paycheck in over eight weeks. As such, she had borrowed from others in order to attempt to meet her expenses. The petitioner's main concerns were to provide food and shelter for her family. She was simply concerned with providing for her family in a time of crisis. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tend to mitigate somewhat the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from the end of January 1982 until mid-March 1982, when it ceased.

Fifth, the petitioner was 24 years of age at the time of the offense. I believe that immaturity was a factor in this case. The petitioner believes she has learned with maturity and such conduct will not occur again. She is now a responsible, productive member of society. In addition, it is clear that the underlying circumstances affected the petitioner's ability to deal reasonably with the problem at that time. She now knows that their were other, legal ways to deal with her problem.

Sixth, the petitioner has no prior or subsequent arrests and has had no other transgressions of the law.

Seventh, because of the underlying circumstances, the petitioner was only concerned with raising and providing for her family. Her family's security and her financial situation were major concerns. Because of her youthfulness, she was unaware of other alternatives which she could have pursued.

Eighth, the petitioner has made substantial rehabilitative efforts. She has made partial restitution. The petitioner has been employed in the casino industry continuously since January 1982 and first entered the industry in August 1980. Her performance has been exemplary. She has demonstrated that she has matured and has accepted responsibility. Her home life has also stabilized, and she has demonstrated her acceptance of responsibility. She is a single parent who takes her obligations seriously.

The petitioner regularly participates in church activities and is the Assistant Youth Director. The petitioner has expressed remorse for, and has no intention of repeating, her misconduct. Accordingly, there is little likelihood, if any, of a repetition. Essentially, there is nothing more the petitioner could do to establish her rehabilitation.

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

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. James was required to establish, by clear and convincing evidence, her good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that she is otherwise a person of good character, honesty and integrity. The misconduct did not involve her licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for her misconduct, has substantially made restitution, regained control over her behavior, performed admirably within the casino industry during the past eight years, is a responsible single parent of three children, is active in her church, and has become a respected member of the community. Accordingly, the petitioner presents no

risk to the public nor to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Ms. James is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Louvenia James for the renewal of a casino employee license be **GRANTED.**

This recommended decision may be adopted, 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, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

8/10/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 16 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

tmp

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Copies of money orders payable to Department of Labor, Division of Unemployment

For the Respondent:

R-1 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Wage Information Inquiry and Benefit Payment and Employment Record from Playboy Hotel and Casino

R-2 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund of Unemployment or Disability Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation, re: mailed July 18, 1985

R-3 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance: Notice of Hearing, dated April 17, 1984

R-4 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance: response to inquiry, dated March 7, 1988

R-5 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: Louvenia James, as of May 6, 1983

R-6 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Schedule of Overpayments

R-7 State of New Jersey, Department of Labor LOOPS Claimant and Refund Inquiry, dated March 9, 1989

WITNESSES

For the Petitioner:

Louvenia James, the petitioner

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-78
APPLICATION NO. 077385-22
REGISTRATION NO. 083933-40
OAL DOCKET NO. CCC 08380-89
ORDER NO. 90-42-7

APPLICATION OF WILLIAM LEE JAMES
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 October 24, 1990,

IT IS on this 8th day of November 1990, ORDERED that the initial decision is rejected; and

IT IS FURTHER ORDERED that the application is granted for the reasons stated on the record.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8380-89
AGENCY DKT. NO. 90-EA-78

IN THE MATTER OF THE APPLICATION OF WILLIAM LEE JAMES FOR A CASINO EMPLOYEE LICENSE

William Lee James, petitioner pro se
Ralph Fusco, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: August 28, 1990 Decided: September 10, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

William Lee James graduated from Bridgeton High School in 1977. He was a special student. James cannot read. During high school, James was a kitchen employee at a steak house in Bridgeton. After graduation he worked for Seabrook Farms for approximately 9 years. Seabrook Farms raises, processes and freeze-packages vegetables for sale to supermarkets across the country. James was hired as a cleaner. He cleaned and polished the equipment used in cooking and processing vegetables.

Seabrook Farms employment is seasonal employment, subject to long layoffs. James sought employment in the casino industry approximately one year ago in order to have full time employment. He obtained a hotel registration from the Casino Control Commission which permits him to work in the casino hotel in a variety of jobs, but it does not permit him to work in or about the casino itself.

James is content working as a cleaner in the kitchen; he calls it the "back of the house." He does not enjoy working in the public eye.

James described himself as a "lonely" person, with few friends. He resides with his grandmother in Bridgeton and commutes daily to work at Caesars by bus. He spends his off duty time at home watching television. Occasionally he goes fishing with an uncle who also resides in Bridgeton. James is exceedingly polite and friendly, once contact is made with him, but he is a very shy man, and unsure of strangers.

James is 32 years old. He has never been convicted of a crime. He earns approximately $6.56 per hour at Caesars. He seeks a non-gaming casino employee license so that he can work as a cleaner on the casino floor. He is not particularly anxious to do so, because he is timid when exposed to the public, but apparently the license will increase his value to his employer, so he has made the application.

The Division of Gaming Enforcement objected to James' license application, but not to his registration, on the grounds that he committed conduct which constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, g and 90e. Section 86c of the Casino Control Act contains a list of crimes. A conviction for any one of them disqualifies an applicant from licensure. Even if a person has not been prosecuted for one of the enumerated offenses, a person may still be disqualified from licensure, if the Division can prove that the person's conduct conformed to the statutory definition of the crime, according to section 86g. Section 90h of the Act permits a person to avoid disqualification however, in the event rehabilitation has occurred. There is a further requirement that each applicant for casino employee licensure prove by clear and convincing evidence that he possesses a good character, honesty and integrity. N.J.S.A. 5:12-89b(2) and 90b.

When James learned that the Division of Gaming Enforcement objected to his application for licensure he requested a hearing. The Casino Control Commission then transmitted the matter to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 5:12-107 and N.J.S.A. 52:14F-1 et seq.

At a prehearing conference the issues of whether or not James committed conduct equivalent to theft in the third degree contrary to N.J.S.A. 2C:20-4 and 2

(over $500); whether or not he possess the requisite good character, honesty and integrity; and, if he committed the criminal conduct, has he rehabilitated himself; were listed for resolution at a plenary hearing which convened on August 28, 1990.

Before the hearing the Division propounded interrogatories upon James. Because he could not read them, he did not answer them. When they were read to him, he could not understand them. When they were explained to him at the hearing, he agreed that he had a judgment against him from the Division of Unemployment Benefits.

The gravamen of the Division's complaint, the sole issue which triggered this investigation and gives rise to the three issues described above, is the undisputed fact that from May 18, 1984 through July 20, 1984, while employed at Seabrook Farms, James received unemployment benefits in the amount of $1,285. James says he did not know at the time that what he was doing was stealing from the government, and in fact, he may not be able to make such a fine discrimination. Indeed, persons much better placed than James, with more education, and of whom we have higher expectations, are equally unable to discriminate when it is the government's money at issue. Nevertheless, James now acknowledges that he was wrong and agrees that he owes the government money.

On subsequent occasions when James was eligible for unemployment benefits, he endorsed his unemployment benefit checks over to the government and so he has partially reduced his debt. It appears that he presently owes about $500 to the government.

James says that he intends to pay the government back; he has just never had the money on hand to do so. He recently made a contract to pay the money back at the rate of $25 per week. He produced addressed envelopes the government sent to him for ease in making the payments. James intended to make his first payment "next week."

All James brought to the hearing were the envelopes, the pleadings, and an honest countenance. He recalled that at the prehearing conference he was instructed to bring witnesses or letters of recommendation, but he said he was unable to obtain them. He explained again that he is a "lonely person" and "stays

by (himself." He said that some of the people he asked for letters have drifted off to other jobs, and some have been too busy.

James was unable to confirm my impression by any evidence (a letter from a supervisor or co-worker, an annual evaluation from his personal file) other than his demeanor, that he is a good and honest worker and poses no threat to the casino or its patrons. But the Casino Control Act is clear; the burden is upon James to "produce such information, documentation and assurances as may be required to establish by clear and convincing evidence (his) good character, honesty and integrity." N.J.S.A. 5:12-89b(2)

Because of James' learning disability, I am not convinced that James committed theft when he received unemployment benefits in 1984. Therefore I **CONCLUDE** that the Division has failed to establish by a preponderance of the credible evidence that James committed conduct which is equivalent to theft by deception in an aggregate amount of more than $500.

However, I must also **CONCLUDE** that James has failed to provide such information, documentation and assurances as may be required to establish by clear and convincing evidence his good character, honesty and integrity.

No crime having been committed, the issue of rehabilitation is moot.

I **ORDER** that the application of William Lee James for a casino employee license be **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

9/10/90
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

9-12-90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 17 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBIT LIST

For the Petitioner:

None.

For the Respondent:

R-1 Certificate of Debt
R-2 Schedule of Overpayment
R-3 Wage Information and Record
R-4 Computer Printout Showing Current Balance

WITNESS LIST

For the Petitioner:

William Lee James

For the Respondent:

William Lee James

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-50
LICENSE NO. 7691-21
OAL DOCKET NO. CCC 6686-89
ORDER NO. 90-31-3

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF DEBORAH L. JONES

ORDER

A hearing 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 August 1, 1990,

IT IS on this 8th day of August 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly pw
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6686-89
AGENCY DKT. NO. 90-EA-50

DEBORAH L. JONES,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Deborah L. Jones, petitioner, pro se

Charles Kimmel, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: May 21, 1990 Decided: June 21, 1990

BEFORE JEFF S. MASIN, ALJ:

This matter comes before the Office of Administrative Law following transmittal from the Casino Control Commission ("Commission"). The Division of Gaming Enforcement ("Division") filed a complaint with the Commission on August 16, 1989, objecting to the renewal of a casino employee license which had been previously issued to the petitioner and which was up for renewal. Ms. Jones 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 January 19, 1990 before Honorable Edgar R. Holmes, who issued a prehearing order on January 22, 1990. Thereafter, a hearing was held before Administrative Law Judge Jeff S. Masin at the Office of Administrative Law in Atlantic City on May 21, 1990. The record closed following completion of the hearing.

ISSUES

The prehearing order set forth the issues as follows:

A. Whether petitioner engaged in acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g, to wit: theft by receiving Unemployment Insurance Benefits to which she was not entitled in 1982, contrary to N.J.S.A. 2C:20-4. The amount charged is over $500 and therefore a Third Degree Theft.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2)?

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act?

EVIDENCE

At hearing, the Division of Gaming Enforcement presented evidence to establish the basis for its objection to the renewal of Ms. Jones' license. Specifically, the Division presented a New Jersey State Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund of Unemployment or Disability Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation, which document was mailed on May 6, 1985 to Ms. Jones at her home in Atlantic City. This document advised that she had been employed at Midtown Motor Inn Limited and that she had also received unemployment benefits illegally while so employed. The demand was for repayment of $906.25, which was the amount allegedly overpaid. In addition, she was disqualified from receiving benefits for one year from the date of mailing and liable for a fine which amounted to $181.25.

The Division also presented documents to show payments made by the Midtown Motor Inn Limited to Ms. Jones in July and August 1982 and a statement by Ms. Jones which she apparently signed on January 4, 1984, in which she states:

> While collecting unemployment benefits between 7-18-82 I did work some weeks for Sands Hotel, some weeks for Midtown Motor Inn.

As a result of the determination that Ms. Jones had violated the law by receiving unemployment benefits while otherwise employed and in circumstances where she would not have been entitled to receive any unemployment, Ms. Jones was advised that a payment of $20 per week would be acceptable as an installment arrangement for refunding the unemployment benefits. The letter confirming this payment schedule is dated June 25, 1985. The record also contains a letter of June 17, 1985 (R-6), which called for $80 a month payments until paid in full.

Ms. Jones testified in her own behalf. She advised that she had been working part-time temporary jobs at the Sands and the Midtown Motor Inn and that she did not feel that she should interrupt the flow of her unemployment checks since the jobs were of a temporary nature. She acknowledged that she had been working in the casino industry prior to her being fired from such employment. She could not recall whether she made any specific payments on the outstanding unemployment obligation, but she did recall that her income tax returns were seized as a method of paying off her debt. She paid off the balance due by way of a check in the amount of $200 and another one in the amount of $204.83 on July 25 and October 6, 1989. She submitted a notice of satisfaction from the Division dated October 11, 1989 indicating that the entire debt had been paid. A Warrant for Satisfaction was filed with the Superior Court, acknowledging the full payment of the obligation.

Ms. Jones has been employed at the Tropicana/TropWorld Casino Hotel for the past seven years. She is currently a security officer earning $350 a week. She submitted a written statement, P-7 in evidence, as part of her testimony. In this, she notes that she was terminated from Bally's Park Place on March 11, 1982 for excessive absenteeism and then filed her claim with the unemployment department. She was penalized because of the fact that she was terminated from employment for a period of about eight weeks. She began seeking employment in other casinos and began collecting unemployment checks at a time when she was not yet employed. She did however work part-time at the Sands and Midtown Motor Inn for a period of four weeks and one week respectively. She reiterates the fact that these were temporary jobs. She continued to collect unemployment because she was "a single parent raising a 12-year-old daughter with the responsibility of paying the rent, supplying food, and clothing. Also the other bills that went on regardless of whether I was employed or not."

In addition, Ms. Jones notes that "she figured that the unemployment checks were my money that I had paid into the Department for the past two-and-one-half years." She explained that it took her a long time to pay back the Division because they were taking her state income tax refund checks for 1986 through 1988, a total of $490.19, and she had heard nothing from them and believed that they were "somewhat content." When she was contacted by the Division of Gaming Enforcement Agent Maggs and was told that her license reapplication might be denied she arranged which the Division of Unemployment to pay the remainder of the balance.

Character Evidence

In support of her position, Ms. Jones presented testimony of several character witnesses. Walter Jeralds, who has been her immediate supervisor for three years in the security department at the TropWorld, testified that she is an outstanding employee, that she has integrity and honesty and that there have been no negative incidents in connection with her employment. She is presently a command post operator and has responsibility for signing out keys, answering phones, etc. She is evaluated once a year and except for some attendance problems has an outstanding overall evaluation. She is highly respected and liked. She also has occasional possession of master keys and is constantly around money without any problem having occurred.

Ronald V. Pisko, a supervisor at TropWorld testified that he is the lieutenant in charge of the shift and supervises Ms. Jones two days a week on the midnight shift She is one of the most dependable and dedicated individuals working for him and is "outstanding," a "highly responsible" individual. Ms. Jones has responsibilities involving surveillance cameras, phones, and keys and has been involved in many arrests, as well as transportation of million of dollars with no shortages or any attitude problems. She is "thoroughly responsible" and a "key employee."

Donald E. Barnes, also a supervisor of Ms. Jones for seven years at the TropWorld, testified that he was the lieutenant in charge of the midnight shift until December 19, 1989, when he became an administrator. He agreed with the assessments provided by Messrs. Jeralds and Pisko are outside of the job context and knows her to be a conscientious parent who pays her bills. He has never heard anything negative about her either or outside of the casino.

Ms. Jones presented evaluations from the Tropicana which generally indicate acceptable or above ratings for her performance. In fact, they appear to show improvement over the years to the extent that they demonstrate a growing number of outstanding ratings.

DISCUSSION

I **FIND** that Ms. Jones, while holding a casino employee license, committed the offense of theft by deception in that she received unemployment benefits in a fraudulent manner, in violation of N.J.S.A. 2C:20-3. The amount of the fraud was in excess of $500 and constitutes a crime of the third degree pursuant to N.J.S.A. 2C:20-2. Although she was not criminally prosecuted, the evidence is sufficient to sustain the Division's burden of establishing the commission of such an illegal act by a preponderance of the credible evidence, as permitted by N.J.S.A. 5:12-86g. This conduct constitutes disqualifying conduct under N.J.S.A. 5:12-86(c)1.

In view of the disqualification of Ms. Jones from licensure due to the conduct in which she engaged, the key issue in this case is whether she has established her good character, honesty and integrity and her rehabilitation by clear and convincing evidence. With respect to these two issues, there is a good deal of similarity in the nature of the evidence which is relevant to the determination of whether the proofs support findings in her favor. Specifically, the evidence establishes that Ms. Jones committed an offense which, while monetary in nature, is of a serious character, particularly due to the fact that she was licensed by the state as a casino employee at the time that she committed the offenses and her employment during the period of fraud was at least partially at a casino facility. It is a serious matter when a licensed individual undertakes to commit fraud upon the citizens of the State of New Jersey, while enjoying the benefit of employment and licensure in the highly regulated and otherwise illegal gambling industry, which was at least partially promoted to New Jersey citizens as a means of increasing employment opportunities, thus reducing the rolls of those forced to receive unemployment benefits at taxpayer's expense.

Ms. Jones' conduct was knowing and willful. She readily acknowledged that she determined that she should continue to accept unemployment benefits while working at the two jobs which she believed would be temporary and from her testimony it appears that she did not consider it necessary, nor did she make any effort, to determine whether the temporary nature of the jobs would in any way actually permit her to continue receiving benefits or not. She simply decided that

she should allow her income to be supplemented by the unemployment benefits while she was being paid for working. The purposeful nature of her conduct increases the severity of the incident.

At the time Ms. Jones engaged in unemployment fraud she was approximately 29 years old. At this age she should have known better. However, it must also be recognized that the incident itself did occur eight years ago and there has been a considerable passage of time, and hopefully a maturation process.

Ms. Jones' reason for her conduct is typical for matters of this nature. Hard pressed by bills, raising a child, in some financial straits, she followed a convenient path which presented itself to her to supplement her income. While her action is economically understandable, this is not an excuse for it.

The most impressive aspect of the rehabilitation proof revolves around Ms. Jones' employment history, particularly during the last three years. She has been employed in the security department of the TropWorld for three years where she has received outstanding evaluations and recommendations, which in this case were presented via live testimony by three individuals who came forward to support their fellow employee. Each served in a supervisory capacity over Ms. Jones and spoke highly of her good character, honesty and integrity. They also pointed out her involvement with the security aspects of the casino operation, including contact with substantial sums, without any problems presenting themselves. This testimony speaks highly of the applicant.

On the whole, it appears that this case involves an individual who, when in some economic difficulty and presented with an opportunity to obtain some extra dollars, gave in to the temptation. Other than this incident, it does not appear that Ms. Jones has been in any other trouble. In some respects the incident may be aberrational, although there is no way of being completely sure that she would not again succumb to such temptations if the situation repeated itself. However, on the whole, given the considerable passage of time, and in light of her more recent conduct, particularly her employment within the casino industry functioning in a position of trust with good success, I **CONCLUDE** that the evidence does establish that Ms. Jones has rehabilitated herself from the adverse inferences arising from her prior disqualifying conduct and that she further possesses the requisite good character, honesty and integrity for casino employee licensure which is required by N.J.S.A. 5:89b(2). Under these circumstances, I **CONCLUDE** that she has established

established rehabilitation pursuant to N.J.S.A. 5:12-90h and that she should be permitted to renew her casino employee license.

It is hereby **ORDERED** that the casino employee license of Deborah L. Jones be **RENEWED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 21, 1990
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

6/22/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 27 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

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EVIDENCE LIST

On behalf of respondent:

R-1 DETERMINATION AND DEMAND FOR REFUND OF UNEMPLOYMENT OR DISABILITY BENEFITS AND IMPOSITION OF PENALTY AND DISQUALIFICATION BECAUSE OF WILLFUL MISREPRESENTATION, with attached SCHEDULE OF OVERPAYMENTS

R-2 Wage Information Inquiry

R-3 Wage Information Inquiry

R-4 Record of Hearing

R-5 Letter of June 25, 1985 from Division of Unemployment and Disability Insurance

R-6 Letter of June 17, 1985 from Division of Unemployment and Disability Insurance

R-7 Employee License Application for Renewal Year 1987-1990, License 07691-21

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-124
LICENSE NO. 73669-21
REGISTRATION NO. 73417-40
OAL DOCKET NO. CCC 08764-88
ORDER NO. 90-33-7

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

Complainant,

v.

ORDER

DOMINGO LABOY,

Respondent.

A hearing 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; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of August 15, 1990,

IT IS on this 30th day of August 1990, ORDERED that the initial decision of the Office of Administrative Law is modified as follows:

> This case is a revocation proceeding against the respondent's casino employee license and casino hotel employee registration. Contrary to the ALJ's recommended disposition at p. 5 of the initial decision, there is no pending application for a casino employee license.

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8764-88

AGENCY DKT. NO. 89-124

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
DOMINGO LABOY,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Mark Pfeffer, Esq., for respondent (Goldenberg, Mackler & Sayegh, attorneys)

Record Closed: May 25, 1989 Decided: June 27, 1990

BEFORE **RICHARD J. MURPHY,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) has filed a complaint with the Casino Control Commission (Commission) under the Casino Control Act, N.J.S.A. 5:12-1 et seq., seeking to revoke the casino employee license and casino hotel employee registration held by Domingo Laboy, a former public area attendant at Harrah's, for his alleged theft of a coin cup containing $42.00 from a patron of Bally's Grand Hotel in August 1988.*

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*As to the procedural history, the Division's compaint was filed with the Commission on November 2, 1988, and filed with the Office of Administrative Law on December 2, 1988, for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The prehearing conference was held on January 19, 1989, and the plenary hearing was held on April 21, 1989, in Atlantic City, with the record closing on May 25, 1989, after receipt of additional documentation. The due date for submission of the Initial Decision was extended on several occasions for a variety of reasons not relevant to this case, including pending public utility matters, and I very much regret any hardship or inconvenience that the extension of this matter until July 2, 1990, has caused any of the parties.

ISSUES TO BE RESOLVED

(1) Whether the respondent engaged in conduct inimical to the policies of the Casino Control Act under N.J.S.A. 5:12-86(g), notwithstanding that this conduct was not successfully prosecuted;

(2) Whether the respondent can demonstrate the good character, honesty and integrity required for lciensrue prusuant to N.J.S.A. 5:12-89(b)2, and N.J.S.A. 5:12-90(b), considering factors of rehabilitation set forth in 5:12-90h.

The Division seeks revocation of respondent's casino employee license and casino employee registration, notwithstanding the fact that the criminal charge of theft was dismissed on or about September 9, 1988.

FINDINGS OF FACT

Domingo Laboy denies that he took a coin up containing $42.00 in quarters from a Patron at Bally's on August 22, 1988. He does not dispute that that amount of money, in that denomination, was found in his possession and confiscated on that date. He claims that those coins were found by him over a period of time in the slot area at Bally's, and that he had the money with him on that day to buy a pair of shoes. He testified that, in August 1988, he was working in the "poker city" area of the Bally's Grand floor, which contains poker card machines, and was assigned to perform housekeeping and cleaning on the casino floor. Specifically he claims that he brought to work with him $25.00 in quarters, which he had previously received in tips or found on the floor and then taken home for safekeeping, and the balance of the $17.50 he found on the floor or received in tips on August 22, 1988. He states that it is not unusual from him to find or receive in tips of $12.00 to $15.00 a day and has received as much as $20.00. His intention in bringing the $25.00 in coins, on August 22, 1988, was to buy a pair of shoes in Atlantic City the next day, after he got off work. He intended to cash the coins into paper at the casino in order to buy the shoes, which cost $40.00. He claims that he did later buy the shoes, and still has them. On two other occasions, he had found a wallet and $1,000.00 on the casino floor and alleges that he turned both into the casino, which is not disputed by the Division.

The Division presented no live testimony at the hearing, but relied on police reports to attempt to establish the conduct of theft by Laboy. The complainant in this case was one Julie M. Conover and the complaint specifically charged Laboy with "unlawfully taking certain moveable property to wit: a coin cup containing $42.00 in quarters in U.S. currency, belonging to another, with the intent to deprive the owner thereof, which is a violation of N.J.S.A. 2C:20-3". (P-1). Security Office Sergeant Bower was on duty on August 22, 1988, and gave the following statement:

> [h]ousekeeper picked up cup of coin which was right next to the machine victim was playing, to the left of the machine. She thought he was just cleaning and then he walked away with it. He came back a minute later it was empty. Then the victim went to the security podium and reported the theft. Got his name off his Id and reported to security. (P-5).

An investigation report by New Jersey State Police Detective J. Cordy, contained the following account, which was admitted into evidence, despite the fact, as respondent's counsel correctly pointed out, it is "double hearsay":

> [h]his date detail to the Bally's Grand Hotel/Casino reference a theft complaint. Upon arrival met with S/O Bower and it was advised that the above listed accused had taken a casino patron's coin cup.
>
> The investigation revealed that the victim had been playing with a slot machine #4429, location 1305-07, when the accused, identified as Domingo Laboy CCC #73669-22, a public area attendant, picked up a partially full coin cup containing $42.00 in coins from along the side of the machine the victim was playing, and returned the cup empty. A statement taken from the victim revealed that she observed him cleaning the slot area, at which time, she observed the accused pick up her coin cup and walk away with the cup. At this point, she still though the accused was doing his job. When the accused returned, he put the coin cup back, next to the machine that the victim was playing; however, the cup was empty.
>
> The accused was arrested, read his rights as per Miranda, and processed. A complaint was signed against the accused for theft by unlawful taking by the victim and forwarded to AC Municipal Court pending a date. · A check with Bally's Grand Surveilance

> Department for any CC TV coverage [video surveilance], was met with negative results. There were no other witnesses to this accident.
>
> The "42.00 in quarters was found on the accused person, it was conviscated, and entered into evidence. It should be noted that the victim originally claimed to have had approximately $20.00 in quarters in the coin cup, then changed the amount. (P-5) (Emphasis added).

The Division also submitted statements from slot manager at Bally's Grand, Mr. David Lyons, indicating that machine #4429 was at location 1305-07 on August 22, 1988, and was a $.25 denomination on that date. (P-6; P-7).

Domingo Laboy, who primarily speaks Spanish and has a more limited grasp of English, says that he was approached by security office Bower on August 22, 1988 and Officer Cordy, who said, referring to the missing coins, "Why did you do that", to which Laboy responded, "But I didn't: she says I did it". He claimed, that part of the money in his posssession, besides the $25.00 he had previously found and brought from home, were tips from winning gamblers, or found money. Laboy also testified that he is "a religious man" who "prays to the Lord every morning" and is very concerned for his salvation. After his dismissal from Bally's he applied for and received a casino employee license in gaming.

Having heard the testimony of Domingo Laboy, which I found to be credible, and considering the police reports submitted by the Division, I **FIND** as a matter of fact that Domingo Laboy did not engage in a conduct of theft of the coin cup from a patron containing $42.00 in change. I **FIND** the respondent's testimony to be sincere and straightforward, and his story is worthy of belief, or at least more worthy than the reports submitted by the Division, in which the complaining patron inflated the amount of money claimed to have been stolen from $20.00 to $42.00, when she learned that the higher figure had been found in Mr. Laboy's possession. On that basis, I **FIND** Ms. Conover's claim to be unworthy of belief, and also note that the criminal charge was dismissed for lack of prosecution. Laboy's claim that he had with him $25.00 in found or tip money brought in from home to buy shoes, as well as $17.50 in coins found on the floor or given in tips by winning gamblers that day, is believable, considering the relatively low level of his position at the casino and commensurately low level of his salary.

CONCLUSIONS OF LAW

I **CONCLUDE** that the Division of Gaming Enforcement has failed to prove that the respondent Domingo Laboy engaged in conduct inimical to the policies of the Casino Control Act under N.J.S.A. 5:12-86(6) on the basis of the above finding of fact, which rests on my assessment of the respondent's credibility, as well as the thin and unconvincing nature of the Division's proofs.

I further **CONCLUDE** that the respondent has demonstrated by clear and convincing evidence his good character, honesty, and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)2 and 90(b)1. Beyond the incident of the allged theft of $42.00 in coins, the Division raises not objection to the applicant's good character, honesty and integrity and I **CONCLUDE** that he has sufficiently demonstrated those qualities to retain his casino employee license.

Again, I regret the delay in the processing of this case, especially in light of my finding and conclusion that the Division has failed to prove that the respondent engaged in the conduct of theft of $42.00 in quarters from a patron.

ORDER

On the basis of the above findings of fact resting on crediblity, and conclusions of law, it is **ORDERED** that the complaint seeking revocation of Domingo Laboy's casino hotel registration is **DISMISSED** and his application for a casino employee license is **GRANTED.**

This recommended decision may be adopted, 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 27, 1990
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

6-28-90
DATE

Dolores A. Aust
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 02 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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LIST OF WITNESSES

Domingo Laboy, respondent

LIST OF WITNESSES

P-1 Summons signed by Julie M. Conovery on August 22, 1988

P-2 Property Description

P-3 A bag containing $42.00 in quarters

P-4 Investigative Report completed by New Jersey State Police Detective J. Cordy on 8/25/88

P-5 Handwrittren Statement by Security Officer Bower, unsigned and undated.

P-6 Letter for May 9, 1989, to R. Lane Stebbins from David Lyons

P-7 Letter of April 24, 1989, from David Lyons to R. Lane Stebbins

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-66
LICENSE NO. 008686-21
OAL DOCKET NO. CCC 09175-89
ORDER NO. 90-42-4

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF CHARLES E. LAIRD

ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 24, 1990,

IT IS on this 25th day of October 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9175-89
AGENCY DKT. NO. 90-EA-66

IN THE MATTER OF THE RENEWAL APPLICATION OF CHARLES E. LAIRD FOR A CASINO EMPLOYEE LICENSE.

Gregory Imperiale, Esq., for petitioner
Ralph Fusco, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: August 14, 1990 Decided: September 12, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

Charles E. Laird is a 34 year old Atlantic City casino blackjack and baccarat dealer. He is well regarded by his peers and supervisors at the Tropicana Hotel and Casino where he is presently employed. He is also well regarded by members of the larger community, many of whom have known him since he was a child. He has numerous personal letters of reference.

Laird was first licensed by the Casino Control Commission (Commission) as a dealer in 1979 and worked at Bally's for approximately eight years. He was fired from Bally's on August 8, 1987 as a result of an arrest on August 2, 1987 in connection with drug charges.

The Margate, New Jersey police searched Laird's home, which he shared with a couple. They found some marijuana plants, small amounts of hash, cocaine and a few pills. Laird told the police that everything in the house was his. He was not aware at the time that he made this statement that the police had found hash in a bedroom recently vacated by a third housemate.

Laird was candid about his drug use. He said that he grew the marijuana from seeds in order to smoke pot more cheaply, but the marijuana was of such poor quality that he rarely used his own crop. He purchased a better grade of marijuana on the street.

Laird also admitted having used cocaine over a period of time but asserted that he had weaned himself from cocaine by the time of the arrest. He denied ever having smoked or purchased marijuana or cocaine while at work in a casino. He also claimed to be drug free ever since the arrest.

Laird did not distribute drugs. There is no proof that he did. He admits only to sharing marijuana with his male housemate. He said the female housemate did not smoke. As a result of his admission that he would share drugs with his roommate, he has satisfied the statute which defines distribution or intent to distribute so broadly as to include sharing.

I therefore **FIND** that Laird possessed marijuana with the intent to distribute it in violation of the law (N.J.S.A. 2C:35-5). This act constitutes a statutory disqualifier and I **CONCLUDE** that Laird is disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86c(1) and 90e unless he is saved from disqualification by being rehabilitated according to section 90h of the Casino Control Act (Act).

An applicant faced with the existence of one or more section 86c(1) disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/her rehabilitation as provided by section 90h of the Act. The factors which the Commission shall consider in determining the applicants rehabilitation are as follows: (1) The nature and duties of the position applied for; (2) The nature and seriousness of the offense or conduct; (3) The circumstances under which the offense or conduct occurred; (4) The date of the offense or conduct; (5) The age of the applicant when the offense or conduct

was committed; (6) Whether the offense or conduct was an isolated or repeated incident; (7) Any social conditions which may have contributed to the offense or conduct; (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.

(1) The licensee is a baccarat dealer in constant contact with casino employees and the public. There is no evidence however, that the licensee ever dealt drugs or ever used drugs at work.

(2) The offense is not a serious one involving distribution for profits. The licensee only shared marijuana with a housemate.

(3) The offense occurred at home.

(4) The offense occurred over three years ago.

(5) The licensee was 31 years old when he was arrested.

(6) The licensee had been engaged in drug use for a period of approximately eight years when he was arrested.

(7) There was no evidence that social conditions contributed to the offense.

(8) The licensee has been treated by the courts as a first offender. He successfully completed pretrial intervention and the charges were dismissed. He has an excellent work record and is well recommended by his supervisors, co-workers and members of the larger community.

I **CONCLUDE** that the licensee has affirmatively established his rehabilitation by clear and convincing evidence.

The applicant must also exhibit good character, honesty and integrity. N.J.S.A. 5:12-89b2 and 90b. The rehabilitation factors are also relevant on this issue.

In addition, the licensee was completely candid about his drug use. He sought to hide nothing. When he denied knowing that hash was in the closet of an empty room, he quickly added that if he had known it was there, he would have smoked it.

The Act requires only that a licensee exhibit good character, honesty and integrity. It nowhere demands a perfect character. The licensee made a mistake. He has paid the penalty and cured the defects. I am satisfied that he no longer uses marijuana or other drugs. In all other respects he appears to be a good worker and citizen and a credit to the industry.

I **CONCLUDE** that the licensee possesses the requisite good character, honesty and integrity for casino employee licensure.

I **DISMISS** the complaint filed by the Division of Gaming Enforcement and **ORDER** that the petitioner's license be **RENEWED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

9/18/90
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

9/14/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 19 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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WITNESS LIST

For the Petitioner:

Charles E. Laird
Robert Morvay

EXHIBIT LIST

For the Petitioner:

P-1 Letter dated August 9, 1990
P-2 Letter dated July 9, 1990
P-3 Letter dated August 6, 1990
P-4 Letter dated June 11, 1990
P-5 Letter dated August 4, 1990
P-6 Letter dated August 4, 1990
P-7 Letter dated August 6, 1990
P-8 Dealer Evaluation dated June 9, 1990
P-9 Letter of Dismissal - Pretrial Intervention Program

For the Respondent:

R-1 Indictment No. 87-08-1609D
R-2 Order of Dismissal
R-3 Margate City Police Department Investigation Report
R-4 Request for Examination of Evidence
R-5 Laboratory Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-CSI-1
APPLICATION NO. 000687-70
VENDOR I.D. NO. 01949
OAL DOCKET NO. CCC 6530-89 and 8993-89
ORDER NO. 90-37-4

APPLICATION OF LAMAN-LOESCHE SUPPLY COMPANY, INC. FOR A CASINO SERVICE INDUSTRY LICENSE

ORDER

A hearing 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 September 19, 1990,

IT IS on this 26th day of September 1990, ORDERED that the initial decision is modified as follows:

1. To find that Robert C. Botti has demonstrated his rehabilitation; and

2. To clarify that Laman-Loesche Supply Co., Inc. is the only applicant for a casino service industry license in this matter, and that it was therefore improper to order that the application of Robert C. Botti for a casino service industry license be denied.

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NOS. CCC 6530-89
and CCC 8993-89
(CONSOLIDATED)
AGENCY DKT. NO. 90-CSI-1

IN THE MATTER
OF THE APPLICATIONS
OF ROBERT C. BOTTI
and
LAMAN-LOESCHE SUPPLY
COMPANY, INC. FOR A
CASINO SERVICE INDUSTRY LICENSE.

John M. Donnelly, Esq., for petitioners (Clapp & Eisenberg, attorneys)
Julia L. McClure, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: June 8, 1990 Decided: July 23, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division filed letters with the Casino Control Commission (Commission) objecting to the issuance of casino service industry licenses to petitioners Botti and Laman-Loesche Supply Co., Inc. The Division identified Botti as a qualifier for the company pursuant to N.J.A.C. 19:43-1.14(a)(2) 1 through 10, because he was listed on the application as Laman-Loesche's vice president for sales. Botti is also alleged to have been convicted of a crime which would render him unfit for casino service industry licensure pursuant to N.J.S.A. 5:12-86 c, g and 92d. The petitioners

requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on January 12, 1990 and the issues to be resolved at a plenary hearing were identified as whether or not Botti committed disqualifying acts pursuant to 86 c and g, whether Botti is a qualifier for Laman-Loesche Supply Co., Inc., pursuant to N.J.A.C. 19:43-1.14(a)(2), whether Laman-Loesche Supply Inc., possesses the requisite good character, honesty and integrity for casino service industry licensure pursuant to N.J.S.A. 5:12-92c, and whether Botti may demonstrate rehabilitation pursuant to Application of Edward Bershad t/a Penn Vending Co. for a Casino Service Industry License, Docket No. 85-CSI-11, final decision 28 March 1989.

FACTUAL DISCUSSION

Botti was employed as a sales representative for Eastern Supply Company in the nineteen seventies. He sold janitorial and maintenance supplies. The Hudson County Vocational Technical School, a public school, located in North Bergen, New Jersey, was one of his customers. Hudson Vo Tech was subject to the New Jersey Public School Contracts Law, which required it to obtain competitive price quotations and award purchase orders to the lowest responsible bidder when the amount to be purchased was $300 or more. N.J.S.A. 18A:18A-37 et seq.

Botti made an arrangement with the school secretary who handled purchases to obtain the school's business. In order for the secretary to appear to comply with the New Jersey School bidding law, Botti submitted additional fraudulent bids for prices higher than the price he and the secretary agreed to. He would then ship the order and she would cause the invoice to be paid because Botti's price appeared to be the lowest bid. Botti and the secretary worked this scheme together numerous times during 1977 and 1978. Botti sold the school more than $50,000 worth of supplies before he was discovered. He was indicted in the United States District Court, New Jersey, in 18 counts, including mail fraud, conspiracy and tax evasion. Botti was tried and convicted on all counts.

Apparently because Botti was politically connected, he was approached by the U.S. Attorney and asked to become a government informant. Botti did cooperate in an investigation involving political corruption, payoffs and kickbacks. He wore a

wire. He said that at the completion of his undercover work, he was offered placement in the federal witness protection program but declined the privilege because he did not want to lose contact with his mother and father.

Botti's involvement in the investigation also delayed his entry into probation, but he eventually completed his term of supervision.

Botti left the Union, New Jersey area, where he had formerly lived, after his arrest, conviction and undercover stint. He obtained a sales position with J.H. Williams Company, a manufacturer of hand tools. Botti covered the Northeastern region of the United States for the company. He built his territory up to the point that management added to it the states of Georgia, Alabama, Florida, Tennessee, Louisiana, Texas and Oklahoma. Unfortunately, the rest of the country did not do as well as Botti did, and J.H. Williams went into bankruptcy.

Botti was recruited by Peter Laman, President of Laman-Loesche Supply Company, a Philadelphia based distributor of tools and maintenance supplies, who was looking for someone to expand the company's activities into the New York metropolitan area. Laman knew Botti because Laman-Loesche distributed a line of tools made by J.H. Williams, among other things.

Botti divulged his criminal background to Laman and Laman nevertheless hired him. Laman says he has never had cause to regret the decision during the four years that Botti has worked for him.

One of the inducements Laman offered to Botti in the process of recruiting him was the title of Vice President. However, the title was honorific only and all decision-making powers remained in Laman and his board of directors, which is apparently comprised of family members.

When the Division objected to the licensure of Laman-Loesche based on Botti's criminal record and his high position in the company, Laman responded by changing Botti's title to Director of Sales and isolating him from all involvement in casino sales. The South Jersey salesman who sells to casinos, now reports directly to Peter Laman. Botti is confined entirely to the New York metropolitan area where he

is apparently doing a good job in introducing the Laman-Loesche line to potential customers.

Several persons came to the hearing to testify about Botti's character.

Ronald H. D'Angelo has known Botti for about twenty four years. He was formerly Botti's priest, and political adversary. Now he is Botti's friend and counselor. He said that Botti has changed dramatically since his arrest and conviction. Botti has moved away from his old neighborhood and friends and has remarried.

He says Botti is now a homebody and a good husband and father. He contrasts this with Botti's former life in which, he said, Botti was a husband and father in name only. Because of Botti's former life style and associates, D'Angelo says, he did not vote for Botti when he ran for political office. Now, he says Botti is worth voting for, although there is no indication that Botti is a candidate for anything but a casino service industry license.

Robert Barnstead worked with Botti at J.H. Williams Company. Barnstead stayed with L.H. Williams; the company survived bankruptcy. Barnstead says that Botti did a good job for Williams; that he won the respect of customers, co-workers and management; that he treated everyone fairly and left the firm on good terms. He says Botti is "A1".

Robin Ranahan met Botti through her acquaintance with D'Angelo. She has only known the new Botti; she did not know the old Botti. She described Botti as "a very caring, very generous and loving father and husband." She based this opinion on her observations of him during social gatherings over the past three years.

DISQUALIFICATION OF BOTTI

The New Jersey Criminal Code makes theft by deception a crime of the third degree when it involves more than $500. N.J.S.A. 2C:20-4 and 2b (2). The Casino Control Act (Act) provides for the disqualification of a person convicted of a 3rd degree theft from casino service industry licensure in the discretion of the Commission. N.J.S.A. 5:12-86c (1) and 92d. Persons who have not been convicted of

the crimes listed in section 86c (1) may nevertheless be disqualified if the Division of Gaming Enforcement can prove by a preponderance of the credible evidence that the person actually committed the acts which constitute the criminal violation. N.J.S.A. 5:12-86g.

Botti's conduct in submitting the fraudulent bids in order to obtain $50,000 or more of Hudson Vo Tech's business is sufficient to constitute a violation of N.J.S.A. 2C:20-4 in the third degree. He was convicted in the federal court of making "false and fraudulent pretenses and representations relating to price quotations ...in order to obtain payment of over $50,000..." Those acts constitute theft by deception.

I therefore **CONCLUDE** that Botti is disqualified from casino service industry licensure pursuant to N.J.S.A. 5:12-86c (1), g and 92d.

IS BOTTI A QUALIFIER FOR LAMAN-LOESCHE

Casino service industry licenses may not be issued unless the individual qualifications of certain natural persons who constitute the business or service industry seeking licensure conform to sections 86 and 89 of the Act. N.J.A.C. 19:41-3.2 and N.J.A.C. 19:43-1.14. Section 89 of the Act requires that applicants possess other qualifications besides the absence of a criminal record as described in section 86. As a vice president of Laman-Loesche, Botti undoubtedly appeared to be such a person because he was in a position to manage and supervise persons who sold supplies to casinos or to personally engage in sales to casinos. N.J.S.A. 19:43-1.14(a) 2.

When Laman-Loesche changed Botti's title to Director of Sales and isolated him from all casino sales involvement it cured the problem which had arisen under the regulation.

At the plenary hearing the Division had every opportunity to test the bona fides of this arrangement. It did not appear that Botti had any involvement, either directly or indirectly, with New Jersey licensed casinos except in two ways so remote as not to bring him within the ambit of N.J.A.C. 19:43-1.14 (a) 2x, a catch-all provision which reads "any other person whom the chair( ) may consider appropriate for approval or qualification."

First, Laman-Loesche has a profit sharing plan so that if the salesman calling on New Jersey licensed casinos has a banner year, it might be reflected in Botti's share of the profits. Secondly, both Laman and Barnstead described Botti as a very professional and experienced sales representative. He is a strong closer. He is available to other sales representatives as a resource during the weekly sales meetings conducted by Laman. Therefore, he might discuss potential sales to casino licensees with the salesman who is actually responsible for the sale.

These two instances of a possible indirect connection to the casino industry should not disqualify Laman-Loesche from casino service industry licensure. In fact Laman-Loesche was acting in compliance with the public interest as perceived by the New Jersey Legislature when it hired a person with a criminal record. N.J.S.A. 2A:168A-1.

Furthermore, Laman's personal qualifications have not been questioned by the Division. His demeanor at the plenary hearing indicates that he is a strong leader and an upright and conscientious man. I believed him when he said that Botti had no contact with New Jersey casinos. I also formed the opinion that Laman himself is highly unlikely to be adversely influenced by Botti if Botti in fact is not rehabilitated.

I **CONCLUDE** that Botti is not such a person who must be approved or qualified in order for Laman-Loesche to become licensed as a casino service industry pursuant to N.J.S.A. 92d, and pertinent regulations.

DOES LAMAN-LOESCHE POSSESS THE REQUISITE CHARACTERISTICS FOR LICENSURE

This issue was not directly addressed at the plenary hearing or in the briefs filed by the parties although it was not abandoned by the Division. From the entire record presented, however, it is obvious that the sole objection to the licensure of Laman-Loesche was Botti's involvement in the company. Nevertheless, the burden is on the applicant by clear and convincing evidence to establish its qualifications for licensure. These qualifications include the possession of good character, honesty and integrity. N.J.A.C. 19:43-1.3.

The company could have qualified by merely terminating Botti's employment. It chose not to do so for reasons which explicate its good character. Its president, Peter Laman said he believed in Botti; that Botti made a mistake but was "living up" to it, trying to change his life, and doing a good job. He would not stop such a man.

In addition, Laman conducted himself on the witness stand in a manner which clearly showed him to be an honest and forthright individual. From the whole record presented in this matter, I **CONCLUDE** that Laman-Loesche Supply Company, Inc. possesses the good character, honesty and integrity for casino service industry licensure required by N.J.A.C. 19:43-1.3.

IS BOTTI REHABILITATED

The rehabilitation criteria described in N.J.S.A. 5:12-90 (h) and 91 (d), are an appropriate context in which to consider Botti's conduct in any determination in his fitness for licensure. This is so because of the discretion afforded the Casino Control Commission by the legislature at N.J.S.A. 5:12-92d. Application of Edward Bershad Company, t/a Penn Vending Co. for a Casino Service Industry License, Docket No. 85-CSI-11, final decision 28 March 1989. Of course, other factors are relevant.

Alan and Ronald Bershad claimed that Philadelphia police officers required them to pay protection to the police in order to place their vending machines in the precinct. The Bershads also traded on the relationship and used the police to discourage customers from going over to the competition. The Commission was greatly concerned by this latter implication of the protection scheme and with the applicant's attempts to minimize its significance.

Botti too attempted to minimize his involvement in the crimes for which he was convicted. He said the school board secretary asked him to submit the fraudulent bids. He said that no one else wanted to sell to the school, and that neither he nor the secretary made any profit. He seemed to imply that he was indicted for doing the school a favor; that but for him no one would have supplied the school with toilet paper and other necessities.

No one can dispute that Botti has made significant progress in terms of rehabilitation. Laman recognizes it and he has given Botti a significant business opportunity.

But the qualification criteria for casino service industry licensure required by the Act and regulations are to insure as far as possible that persons who deal with casinos will not attempt to evade the regulatory scheme or bribe and corrupt the licensees with whom they deal. This is the very kind of act of which Botti stands convicted. Even giving Botti every benefit of doubt and accepting at face value his interpretation of the events leading to his conviction, he nevertheless totally disregarded the law regarding school contracts. He attempted to avoid its requirements by fraud and deception. This occurred over a substantial period of time and involved a substantial sum of money.

Public confidence and trust in the credibility and integrity of the regulatory process and casino operations is a major factor to be considered in licensing decisions. N.J.S.A. 5:12-1 (6). That is why rehabilitation and evidence of good character, honesty and integrity and other qualifications are required to be shown by the applicant by clear and convincing evidence. N.J.S.A. 5:12-80a. Botti has failed to carry that burden in this case.

I **CONCLUDE** that Botti has not affirmatively established his rehabilitation and his good character, honesty and integrity by clear and convincing evidence.

ORDER AND DISPOSITION

It is **ORDERED** that the application of Robert C. Botti for a casino industry license be **DENIED**; it is further **ORDERED** that the application of Laman-Loesche Supply Co., Inc. for a casino service industry license be **GRANTED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 23 1990
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

7/25/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 26 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Peter P. Laman, Jr.
Robert C. Botti
Ronald H. D'Angelo
Robert Barnstead
Robin Ranahan

For the Respondent:

None

EXHIBIT LIST

For the Petitioner:

P-1 Indictment
P-2 Judgment and Probation Commitment Order
P-3 PHD Form-4

For the Respondent:

R-1 Letter, dated May 24, 1990, from Rose A. Giaquinto, U.S. Probation
R-2 Invoiced Sales Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-13
REGISTRATION NO. 088978-40
OAL DOCKET NO. CCC 05842-89
ORDER NO. 90-35-10

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

Complainant,

v.

MICHAEL A. LaVECCHIA,

Respondent.

ORDER

A hearing 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 September 5, 1990,

IT IS on this 12th day of September 1990, ORDERED that the initial decision is modified as follows:

> Possession of a controlled dangerous substance with intent to distribute within 1,000 feet of a school in violation of N.J.S.A. 2C:35-7 is not a specifically enumerated disqualifying offense under N.J.S.A. 5:12-86(c)(1), nevertheless it is an inimical offense requiring disqualification of the respondent pursuant to N.J.S.A. 5:12-86(c)(2).

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5842-89
AGENCY DKT. NO. 90-13

DIVISION OF GAMING ENFORCEMENT,
Complainant,
v.
MICHAEL A. LAVECCHIA,
Respondent.

R. Lane Stebbins, Deputy Attorney General (Robert J. Del Tufo, Attorney General of New Jersey, attorney) for complainant

Michael A. LaVecchia, respondent, pro se

Record Closed: May 20, 1990 Decided: July 10, 1990

BEFORE **WALTER F. SULLIVAN,** ALJ:

This matter began on July 5, 1989, when the Division of Gaming Enforcement brought a complaint seeking to revoke the casino hotel employee registration number of the respondent, Michael A. LaVecchia (88978-40) based upon his conviction for possession of a controlled dangerous substance with intent to distribute within 1000 feet of a school, N.J.S.A. 2C:35-7. The Casino Control Commission characterized the matter as a contested case and transmitted it to the Office of Administrative Law for disposition pursuant to the Administrative Procedure Act. Following a prehearing conference, a hearing was held on April 23, 1990. At the conclusion of the Division's proofs, I directed the Attorney General to file a motion to amend the complaint with respect to certain material he had elicited during the hearing with respect to seeming misrepresentations by Mr. LaVecchia with respect to his personal history disclosure form filed before the Board in 1988.

The Division so moved and the motion was not opposed. The record closed on May 20, 1990.

As a threshold matter, the Attorney General noted in the hearing room that N.J.S.A. 2C:35-7 is not explicitly listed among the crimes which will serve as an automatic disqualifier under the Casino Control Act, §86(c)(1). Mr. LaVecchia does not dispute that he was convicted of N.J.S.A. 2C:35-7, but since it was the only conviction arising out of his indictment (2564-10-88), the question of whether or not the conviction serves as a disqualifier gains importance.

The Division argues that the disqualifiers include N.J.S.A. 2C:35-5a(1), namely the knowing and purposeful possession with intent to distribute a controlled dangerous substance. The question then arises as to whether or not these elements, further restricted to possession within 1000 feet of a school property may serve as a disqualifier since that is the activity which under the conviction. I **ORDER** that it can.

I concede that neither side has argued a body of case law with respect to lesser included offenses as specifically understood in the regulatory process or, more specifically, the casino control process. The concept of "lesser included offense" pertains chiefly to the statutes governing pleading in the criminal courts. N.J.S.A. 2C:1-8 and, in a broader sense, to questions of double jeopardy.

On the other hand, in applying the Casino Control Act, the Casino Control Commission bears the responsibility of carrying out the legislative intent as best it can be discerned in the statute. I would consider it an act of folly to exempt possession with intent to sell in the vicinity of a school from the generalized disqualifier of intention with intent to sell. Clearly the former has been found more destructive by the Legislature and LaVecchia has not argued that this is not so. Therefore, since the act which would serve as a disqualifier is in every respect manifest in the act for which LaVecchia was convicted, I view N.J.SA. 2C:35-7 as a disqualifier under the Casino Control Act.

I **FIND** that Mr. LaVecchia has been convicted of this offense.

Proceeding from the conclusion that an automatic disqualifier exists, I note Mr. LaVecchia's arguments in support of his conclusion that he has been rehabilitated and the Division's arguments that he is not. In my view, Mr. LaVecchia's arguments are substantial but insufficient.

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On Mr. LaVecchia's part, I note from the demeanor of those in the hearing room that his father stood beside him throughout the hearing.

Furthermore, Ms. Connie Kopp, Director of Hotel Operations at the Showboat testified for Mr. LaVecchia. He works there as a bellman. Ms. Kopp testified that she had been told by her personnel staff that Mr. LaVecchia had applied for employment as a bellman and indicated to her that he had recently been released from a four month stay in jail on the convictions described above. Ms. Kopp expressed that she had raised reservations at the time but was motivated to interview Mr. LaVecchia because of his forthrightness. Following the interview, she offered employment at Showboat in the capacity as a bellman in which he has access to the personal property of others. Ms. Kopp indicated that she watches Mr. LaVecchia like a hawk and has found nothing to complain of.

Furthermore, Mr. LaVecchia offered two form of evidence from the criminal justice system in support of his claims to rehabilitation. He has submitted documentation of drug testing which indicates that he is drug free and, apart from that, has supplied a report of his probation officer who indicates that his period of probation and release goes well.

The foregoing is **FOUND** as **FACT**.

Be that as it may, a number of considerations weigh on the opposite scale against Mr. LaVecchia which cannot be ignored. The first is the recency of the crime for which he was convicted and the second is its seriousness. I will not dwell on the national or societal problems of cocaine other than to note that the amount of which Mr. LaVecchia was convicted of possessing is by statute evidence of an intent to distribute. As noted above, Mr. LaVecchia found himself within 1000 feet of a school and while there is no evidence of actual distribution or attempt to distribute, I do not quarrel with the legislative judgment that having the means of destruction within the immediate vicinity of a school is trouble enough.

Furthermore, Mr. LaVecchia was arrested a second time for much the same kind of crime about a month after the arrest which gave rise to the conviction. This arrest, also for possession of cocaine, led to a conviction in Municipal Court and Mr. LaVecchia can hardly claim to be a victim of some unusual form of bad luck.

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More seriously still, a review of Mr. LaVecchia's personal history disclosure form, filed on October 6, 1988 by the Commission indicates Mr. LaVecchia did not acknowledge either the August arrest or the September arrest and September conviction. Mr. LaVecchia testified that his mind was clouded by drug usage at that time, but the general mitigating effect of this statement is diminished by the fact that his mind was clouded in precisely the one direction which worked chiefly to his advantage.

Lastly, Mr. LaVecchia attempted to initiate a discussion in the hearing room denying that he was guilty of the violation discussed above. Mr. LaVecchia pleaded to one of three counts of an indictment and Mr. LaVecchia was represented by counsel. Mr. LaVecchia addressed these realities by his observation that he was unable to make contact with counsel until 46 days had elapsed during his four month incarceration, which denied him access to the Appellate Division.

I indicated at the hearing that while the courts are open to the possibility that Mr. LaVecchia pleaded guilty to a crime he did not commit while in a state of personal agitation, I cannot accept such a statement in this proceeding. Mr. LaVecchia's conviction was in the Superior Court and it is the Superior Court to which Mr. LaVecchia can and may have recourse if he is minded to pursue his position. Nevertheless, as bearing on the question of rehabilitation, the denial of guilt places Mr. LaVecchia in the awkward position of claiming to be rehabilitated from a crime he never committed in the first place.

Of course, I understand that life and law are not so cut and dry and that the logic of Mr. LaVecchia's position might be that he has been rehabilitated from the usage of controlled dangerous substances which clouded his judgment and generally led to the events described by the arresting officers. However, I see nothing in the record to indicate an acknowledgement of wrongdoing and I do see a repeated offense which might be treated as a continuous course of conduct.

The foregoing is **FOUND** as **FACT**.

For these reasons, I **CONCLUDE** that Michael A. LeVecchia has not yet met the standard of rehabilitation of N.J.S.A. 5:12-91D and that his license should be revoked.

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This recommended decision may be adopted, 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 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(c).

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

July 10, 1990
DATE

WALTER F. SULLIVAN, ALJ

Agency Receipt:

7/11/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 13 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

tp

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WITNESSES

On behalf of Complainant:

None

On behalf of Respondent:

Michael A. LaVecchia
Connie Kopp

EXHIBITS

On behalf of Complainant:

P-1 Personal history disclosure form 4A of Michael LaVecchia
P-2 Indictment No. 2564-10-88 respecting MIchael A. LaVecchia and others
P-3 Judgment of conviction and Order for Commitment upon a guilty plea dated December 12, 1988
P-4 Gloucester City Police Department Complaint No. 88-9381 signed by Investigator W. G. Crothers
P-5 New Jersey State Police Report No. A2228860 dated September 4, 1988

On behalf of respondent:

R-1 Letter of April 6, 1990 To Whom It May Concern from Jody A. Jicciarone
R-2 Report of February 2, 1990 from Damon Clinical Laboratories respecting MIchael A. LeVecchia

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-M-10
ORDER NO. 90-38-9

IN THE MATTER OF THE :
QUALIFICATION OF ROGER LEE :

ORDER

A hearing having been held before Commissioner E. Kenneth Burdge; and the initial decision of Commissioner Burdge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 26, 1990,

IT IS on this 17th day of October 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Roger Lee is qualified pursuant to N.J.S.A. 5:12-89 and -85;

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

By: Dennis Daly /mm
DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-M-10

IN THE MATTER OF THE QUALIFICATION

OF ROGER LEE

INITIAL
DECISION

Appearances:

For Roger Lee:

Howard A. Goldberg, Esq. and
Deborah Tauber, Esq.,
Horn, Kaplan, Goldberg, Gorny & Daniels

For the Division of Gaming Enforcement:

James C. Fogarty, Deputy Attorney General

Before E. KENNETH BURDGE COMMISSIONER:

Statement of the Case

Mr. Roger Lee is required to be qualified to casino key employee license standards in connection with the license renewal of Boardwalk Regency Corporation (BRC) by virtue of his position as senior vice president, finance and administration, and treasurer of BRC holding companies, Caesars World, Inc., and Caesars New Jersey, Inc. Mr. Lee was first found qualified in connection with BRC's 1985 license renewal and has been requalified with each subsequent renewal.

The sole issue to be decided is whether Mr. Lee is able to establish his good character, honesty and integrity as required by N.J.S.A. 5:12-85 and -89. The questions raised

center on Mr. Lee's violation of the law prohibiting corporate contributions to political campaigns for federal offices. Although the conduct to be examined occurred in 1984, it has not been raised nor considered in any prior proceeding before the Commission.

Procedural History

By letter report dated March 9, 1990, the Division of Gaming Enforcement asked that a hearing be held regarding Mr. Lee's continued qualification for licensure. The Commission agreed and, pursuant to N.J.S.A. 5:12-107a(1), I was designated hearing Commissioner.

The hearing was held on July 10, 1990, and the record closed on that date.

Facts

Prior to the hearing the parties entered into a stipulation of facts (Exhibit J-1, attached) which is adopted and incorporated herein by reference.

In 1984 Mr. Lee was chief financial officer of the Bekins Company. On February 3, 1984, the then-president of Bekins, Albert Labinger, asked Lee to contribute $250 to the Glenn campaign and to solicit additional $250 contributions from Lee's subordinates. Labinger advised that the request for contributions was coming from Irwin Jacobs, chairman of the board at Bekins, and that the company could "make him whole" for his contribution. That same day Mr. Lee gave Labinger a check for $250 and solicited campaign contributions from Jack Foti, Bekins's director of corporate

development, and Joseph P. Noga, Bekins's controller. Mr. Lee told Foti and Noga that they could be reimbursed either through their expense account reports or through an increase in their bonus incentive award.

Foti and Noga contributed to the Glenn campaign. Both sought and received reimbursement, Foti through his expense account and Noga through his bonus award. Mr. Lee authorized Foti's reimbursement through his expense account and was aware that Noga and others were reimbursed through bonus checks that were "grossed up" to compensate them for the contributions made at the request of Bekins's management.

Mr. Lee never sought nor received any reimbursement for his contribution to the Glenn campaign.

At around this time, Bekins's holding company, Minstar, Inc., was conducting an investigation of improprieties allegedly committed by Bekins's general counsel. In the course of that investigation, Minstar learned that various Bekins employees had been reimbursed by Bekins for contributions to the Glenn campaign. Minstar turned this information over to the Federal Election Commission (FEC) which subsequently conducted its own investigation.

By letter dated June 27, 1985, the FEC notified Mr. Lee that it had determined that there was reason to believe that he had violated 2 U.S.C.A. 441, the Federal Election Campaign Act of 1971.

On October 25, 1988, Mr. Lee entered into a consent order with the FEC in which he did not contest that when he authorized the reimbursement of Bekins's employees who made contributions to John Glenn's 1984 presidential campaign, he consented to making a corporate contribution in violation of 2 U.S.C.A. 441b(a) which states:

> It is unlawful for ... any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office [for a candidate to federal office] ... or any officer or any director of any corporation ... to consent to any contribution or expenditure by the corporation ... prohibited by this section.

The consent order further provided that it was Mr. Lee's position that any violation of the law was neither knowing nor willful.

Findings and Conclusions

At the hearing testimony was solicited from only one witness, Mr. Lee. Lee testified he did not know it was unlawful for a corporation to reimburse its employees for federal campaign contributions until he was notified by the FEC in June 1985 that it was investigating his possible violation of the Federal Election Campaign Act of 1971. According to Lee, he merely acquiesced to the suggestion of his boss, Mr. Labinger, that the employees' contributions be made to appear as a popular show of support for Glenn. It was for that reason, Lee testified, that he rejected an expense account submitted by Mr. Foti which expressly listed

his contribution to the Glenn campaign as a miscellaneous expenditure of $250.

Mr. Lee readily acknowledged that he should have reflected on the matter before proceeding, but did not do so, much to his subsequent and continuing regret. As Lee put it, "I got a quick request, I reacted quickly and it was in error, I found out afterwards and Lord knows I will never do it again." (T40-24 to T41-1).

Lee denied that he had suggested to any of his subordinates that false expense vouchers could be submitted.

Some of Mr. Lee's statements are contradicted by other evidence in the record. For example, in a deposition before the FEC (R-3), Mr. Foti testified that, after he had naively included his John Glenn contribution as a miscellaneous expense on his expense report, Mr. Lee returned his report, indicating that he, Foti, would have to "disguise the expense in some other way." (T85). According to Foti, Mr. Lee suggested charging for personal air fare. (R-3 at pages 16 to 17).

When questioned about this testimony, Lee emphatically denied making any such statement. Lee insisted that his instructions had been misunderstood. (T57 to T60). Lee stated that he had recounted to Foti what Labinger had told him, namely that he (Foti) was being asked to make a contribution because the chairman of the board wanted to have "a number of people make small contributions in order to demonstrate a grass roots support from multiple people

and that if he (Foti) wanted, the company would permit him to be reimbursed for this indirectly through his expense reports." (T36-6 to 11). Lee further testified that he had informed Foti that business expense "must be legitimate ... with a true business purpose served," but that he (Lee) would be more "liberal" rather than "ultra strict" as he had been in the past. Lee offered as an example that under his normally strict standard he would disallow meal expenses which were predominately social and only partly business-related. Under the more liberal policy, he would approve an expense report in those circumstances to allow recompense for the contribution.

In his summation the DAG expressed some reservations about Mr. Lee's testimony, particularly with respect to his explanation for disallowing Foti's initial, candid expense account report. However, the DAG ultimately accepted Mr. Lee's testimony as credible and indicated that the Division would not object to his re-qualification.

Having closely observed Mr. Lee as he testified, I too find him a credible witness. I further find that when he directed his subordinates to make political contributions and arranged for their reimbursement, he did so to satisfy the desires of his superiors in the company. Moreover, I believe that he acted in complete ignorance of the law regarding corporate contributions. His rejection of Foti's candid expense report is, I agree, disconcerting at first glance. However, upon consideration of all the evidence

before me I am persuaded that Lee believed that reimbursement in this manner would not be "indirect," and therefore not consistent with the instructions of Mr. Labinger.

Of course, that does not excuse the violation of the political contribution laws, and Mr. Lee has already been called to account for his improprieties by the appropriate federal authorities. The inquiry here is what effect Lee's conduct has upon his qualification under the Casino Control Act. It is neither my province nor inclination to determine whether the restitution paid by the Bekins company was in derogation of internal revenue laws or any other, and I note that this record does not establish that Lee approved any expense allowances which were demonstrably non-business related.

At worst, Lee approved questionable expense reports and authorized bonuses higher than legitimate business interests would appear to have warranted. Such conduct does not exemplify the highest standards one might expect of a chief financial officer, a fact which Mr. Lee has himself come to recognize. Nevertheless, it does not necessarily follow that one cannot satisfy the exacting qualifications under the Casino Control Act on that account.

In evaluating Mr. Lee's fitness under the criteria of good character, honesty and integrity I am obliged to consider "the sum total of [his] attributes, the thread of intention, good or bad, that weaves its way through the

experience of [his] lifetime." In re Bally's Casino Application, 10 N.J.A.R. 356, 393 (Casino Control Commission 1981).

Upon consideration of the entire record I find the events and circumstances of the election law violations in 1984 to be a truly aberrant event in Lee's otherwise law-abiding and respectable life. This incident when balanced against the remainder of the evidence elicited in this proceeding and with the assurance that the DGE's thorough investigation of Mr. Lee uncovered nothing other than positive indicia of Mr. Lee's qualification, does not render Mr. Lee unqualified under the Casino Control Act.

I therefore conclude that Roger Lee has clearly and convincingly demonstrated his good character, honesty and integrity. Accordingly, I order that he be found qualified pursuant to N.J.S.A. 5:12-89(b)(2) and -92(b).

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.

8/23/89
Dated

E. Kenneth Burdge
E. Kenneth Burdge, Commissioner
Hearing Examiner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-72
LICENSE NO. 050635-21
REGISTRATION NO. 038065-40
OAL DOCKET NO. CCC 07632-89
ORDER NO. 90-32-8

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF FRANK N. LEICHTNAM

ORDER

A hearing 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 August 8, 1990,

IT IS on this 9th day of August 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining 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 this denial shall not affect Frank M. Leichtnam's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly DD

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7632-89
AGENCY DKT. NO. 90-EA-72

FRANK N. LEICHTNAM,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Elliot C. Beinfest, Esq., for the petitioner

R. Lane Stebbins, Deputy Attorney General for the respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: May 17, 1990 Decided: June 28, 1990

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

This matter concerns the letter filed by the respondent, the Division of Gaming Enforcement (Division), with the Casino Control Commission (Commission) on August 4, 1989, objecting to the renewal of the casino employee license of the petitioner, Frank N. Leichtnam. The petitioner requested a hearing and the matter was transmitted on October 5, 1989 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 telephone prehearing conference was held on February 23, 1990, at which time the parties agreed that the issues in this matter are:

A. Whether petitioner committed acts which constituted a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: theft by deception, a violation of N.J.S.A. 2C:20-4.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee license pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h.

The hearing took place on May 17, 1990, in the Office of Administrative Law in Atlantic City, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** that there are no factual disputes in this matter.

During its investigation, the Division determined that a certificate of debt was filed against the petitioner by the New Jersey Division of Unemployment and Disability Insurance, State Department of Labor (Labor). This certificate of debt is based on the determination by Labor that the petitioner had received unemployment benefits, totaling $535.00, between May 1, 1984 and May 29, 1984, due to his misrepresentation of his employment status (R-1, R-2, R-3, R-4, R-5). With interest and fines, the total amount sought by Labor from the petitioner was $768.99 (R-6). Between May 1, 1984 and May 29, 1984, Mr. Leichtnam was employed by Trump Plaza Hotel and Casino (Trump).

Mr. Leichtnam stated that when he was collecting unemployment benefits in 1984, he was not familiar with the law relating to these benefits. Mr. Leichtnam thought that when he was determined eligible for unemployment benefits, he was entitled to collect all of the checks for a certain period of time, and that he was to notify Labor regarding any new employment thereafter. Mr. Leichtnam's period of

eligibility for benefits ceased at the end of May 1984, and Mr. Leichtnam admitted that he did not inform Labor that he got a job with Trump at the beginning of May 1984. When he got this job, Mr. Leichtnam was aware that he would not immediately get a paycheck from Trump.

The petitioner stated that he is 37 years old and that he graduated from high school. Prior to May 1984, Mr. Leichtnam was drinking excessive amounts of alcoholic beverages and found it difficult to support his family on his unemployment benefits. The petitioner's wife left him and for a while he could not find his wife and three children. According to the petitioner, he was opposed to the divorce and became depressed during the divorce proceedings. For a while after the divorce (P-1), Mr. Leichtnam continued to drink heavily. Later, he started to go to church. Mr. Leichtnam stated that he has now improved his life style, he no longer drinks, he has a job at Caesar's Hotel and Casino and he has recently remarried.

According to the petitioner, he never committed any criminal offenses either before or after the matter relating to the overpayment of unemployment benefits. Mr. Leichtnam indicated that this overpayment was due to an error on his part, that it was his only mistake, that he is sorry and that he will never repeat such action in the future. Additionally, the petitioner stated that he paid the entire amount he owed to Labor (P-2). The petitioner admitted that he was advised by a representative of the Division that he should pay the amount he owed to Labor, and it was then that he paid the full amount in two payments (R-6, P-2).

Prior to working for Trump, Mr. Leichtnam was employed as a security officer by Bally's Casino and Hotel. This was his first job in the casino industry and he quit after about ten months. Later, he was employed as a security officer by Resorts Hotel and Casino and was terminated after about one month due to excessive absences. Also, the petitioner worked for Showboat Hotel and Casino for a short period of time and was terminated for excessive absences.

CONCLUSIONS OF LAW

Based on the facts presented, Deputy Attorney General R. Lane Stebbins argued that the petitioner misrepresented his employment status to Labor in order to continue to receive unemployment benefits. Although no criminal action was taken against the petitioner, Mr. Stebbins argued that the petitioner's action is analogous to theft by deception in excess of $500, a violation of N.J.S.A. 2C:20-4,

which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g. Mr. Stebbins noted that there is a recent case with similar facts. In that case, the Commission adopted an initial decision holding that the person's license should not be renewed. Thomas v. Division of Gaming Enforcement, OAL DKT. No. CCC 4401-89 (Feb. 7, 1990), adopted by Comm., March 23, 1990. In the Thomas case, concerning the collecting of unemployment benefits while employed by a casino, Administrative Law Judge Jeff S. Masin held that it "does not reflect well upon the casino industry or its employees for a licensed person to dip into the public till while at the same [time] reaping the rewards of casino employment" (Id. at p.4).

Further, Mr. Stebbins argued that the petitioner's casino job as a security guard is a position of trust which justifies the careful scrutiny of his qualifications by the Commission. Mr. Stebbins argued that because of the overpayment of unemployment benefits, the petitioner cannot demonstrate his good character, honesty and integrity as required for the continuation of his casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b. Also, Mr. Stebbins argued that the petitioner has not shown rehabilitation by clear and convincing evidence.

Mr. Stebbins noted that the petitioner paid his debt to Labor only after the Division objected to the renewal of his casino employee license. The overpayment occurred in 1984 and the petitioner did not make the repayment until 1989. Lastly, Mr. Stebbins noted that the petitioner has a poor employment record in the casino industry.

Elliot C. Beinfest, Esq., on behalf of the petitioner argued that the petitioner's acceptance of the overpayment of unemployment benefits was not a criminal act since the petitioner never intended to commit a crime. Mr. Beinfest stressed that the matter concerns only the last couple of checks issued by Labor and argued that the petitioner was confused about his status since he only obtained employment at the end of his claim period and he knew that the casino would not give him a paycheck until after the first two weeks of employment. Mr. Beinfest admitted that the petitioner had a "shaky" record of casino employment; however, he argued that this was due to his absences and that this record should not reflect adversely on him. Mr. Beinfest stated that the petitioner has shown that he overcame his drinking problem, has obtained a new job, has no criminal record and has recently married. Further, Mr. Beinfest argued that six years have passed since the matter relating to the overpayment of unemployment benefits.

Based on the facts, I **CONCLUDE** that the Division has shown a statutory disqualification pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g. The Division has shown that the petitioner received an overpayment of unemployment benefits by misrepresenting his employment status and this action constituted theft by deception, a violation of N.J.S.A. 2C:20-4. I have difficulty accepting petitioner's testimony that he was not aware that he had to promptly report his employment to Labor and was not aware that he could not collect unemployment benefits while working. More likely, the petitioner did not report his employment because he needed the money to support his drinking habit, and his depression as to his marital problems made him indifferent to his legal responsibilities.

As to rehabilitation, I recognize that this incident is the petitioner's only criminal action, and that at the time he committed the offense, Mr. Leichtnam was having a drinking problem and had just gone through an emotional divorce proceeding. I recognize that he no longer drinks, has remarried and has sincerely resolved not to repeat such illegal action.

Also, I recognize that the petitioner was a mature person at the time he accepted the overpayment of benefits, and notwithstanding the requests of Labor, he did not repay the debt until after the Division objected to the renewal of his casino employee license. I recognize that Mr. Leichtnam had a casino job at the time he accepted the overpayments and that he presented no reasons for the long delay in repaying the debt to Labor. Further, I note that the petitioner presented no witnesses at the hearing regarding his rehabilitation or as to his good character, honesty and integrity.

Based on the facts, I **CONCLUDE** that the petitioner has not shown by clear and convincing evidence his rehabilitation pursuant to N.J.S.A. 5:12-90h. Additionally, I **CONCLUDE** that the petitioner has not shown by clear and convincing evidence his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 28, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

6-29-90
DATE

Dolores Dest
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 0 3 1990
DATE

Jaynee LaVecchia/KS
OFFICE OF ADMINISTRATIVE LAW

caj

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WITNESSES:

For the Petitioner:

Frank N. Leichtnam

For the Respondent:

None

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Final Judgment of Divorce, dated February 7, 1984

P-2 Letter from Richard Zamparelli and the Warrant for Satisfaction

For the Respondent:

R-1 Notice of Hearing before the Division of Unemployment and Disability Insurance

R-2 Record of hearing before the Division of Unemployment and Disability Insurance

R-3 Determination and demand for refund, dated December 19, 1985

R-4 Schedule of overpayments

R-5 Claimant's benefit payments and employment record

R-6 Computer print out showing amount due to the Division of Unemployment and Disability Insurance

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-423
APPLICATION NO. 075332-22
OAL DOCKET NO. CCC 8379-89
ORDER NO. 90-29-5

APPLICATION OF ADRIAN LINDSEY
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 July 18, 1990,

IT IS on this 27th day of July 1990, ORDERED that the initial decision is adopted; 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

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8379-89
AGENCY DKT. NO. 89-EA-423

ADRIAN LINDSEY,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Adrian Lindsey, the petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for the respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: May 4, 1990 Decided: June 4, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Adrian Lindsey, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (maintenance and cleaning), pursuant to *N.J.S.A.* 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section

89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a maintenance and cleaning person and subsequently a blackjack or craps dealer in the casino industry. By letter to the Commission, dated May 8, 1989, the Division objected to the petitioner's application for licensure as a maintenance and cleaning person asserting that the petitioner had committed the offense of theft by unlawful taking (third degree), which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89b(2). Based upon the report, the Commission notified the petitioner on June 13, 1989 that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated June 13, 1989, which was received by the Commission on October 24, 1989, the petitioner requested a hearing. On October 25, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on October 31, 1989, 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 in the matter was held before me on December 5, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to *N.J.S.A.* 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by *N.J.S.A.* 5:12-86g, to wit: *N.J.S.A.* 2C:20-3, theft by unlawful taking.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to *N.J.S.A.* 5:12-89b(2) as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on May 4, 1990, at the City Council Chamber, Bridgeton City Hall, Bridgeton, New Jersey, after which the record closed.

FACTUAL DISCUSSION

On August 9, 1987, Kenneth Walden, a friend of the petitioner, asked the petitioner to help him burglarize a home at 78 Summit Avenue in Bridgeton. The petitioner refused to enter the home; however, he did agree to remain outside the home and act as a lookout. The petitioner helped Mr. Walden enter the home through a window, and the petitioner's fingerprints were subsequently discovered by police on the pane of window glass. Nothing was taken from the home.

Mr. Walden then had the petitioner accompany him to a home at 7 Suncrest Avenue in Bridgeton. Mr. Walden then attempted to burglarize this home and again requested the petitioner's assistance. The petitioner again refused to enter the home; however, he did agree to remain outside as a lookout. Mr. Walden entered the house through a window. The petitioner heard "hollering" coming from the house, and he ran home. He does not know if anything was taken from that house.

Later that evening, Mr. Walden burglarized the home at 403 Fayette Street in Bridgeton. He stole a microwave oven, a 19-inch color television, and several pieces of jewelry. The value of all the articles was estimated by the owner to be $925.00 (R-3). Mr. Walden took the stolen articles to the petitioner's home and asked the petitioner to help him sell the articles. The petitioner refused and asked Mr. Walden to remove the stolen articles.

After being arrested regarding other burglaries, Kenneth Walden, in an attempt to "get a deal from the prosecutor," implicated the petitioner in another burglary. He stated that he and the petitioner had entered the home at 11 Glenn Drive in Bridgeton and had stolen a stereo system. He further stated that they had sold the stereo to Jeffrey Stewart (R-7). The home at 11 Glenn Drive had been burglarized on August 17, 1987, and a stereo system valued at approximately $900.00 had been taken (R-6). When questioned by police, the petitioner denied involvement in this burglary; however, after the principles of accessory after the fact and accomplice were explained to him, he admitted involvement. He indicated that Mr. Walden had entered the home through a window and removed a stereo system.

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Mr. Walden took the stereo system to the petitioner's home, and the petitioner helped him sell the stereo (R-8).

On January 27, 1988, the petitioner was indicted by the Cumberland County Grand Jury and was charged in Indictment No. 88-01-0064-I/A with one count of theft by unlawful taking (third degree), in violation of *N.J.S.A.* 2C:20-3, and one count of burglary (third degree), in violation of *N.J.S.A.* 2C:18-2, for the August 17, 1987 offense (R-4). On March 1, 1988, the petitioner was indicted by the Cumberland County Grand Jury and was charged in Indictment No. 88-03-0223-I/B with two counts of burglary (third degree), in violation of *N.J.S.A.* 2C:18-2, one count of theft by unlawful taking, in violation of *N.J.S.A.* 2C:20-3, and one count of attempted burglary, in violation of *N.J.S.A.* 2C:5-1 and *N.J.S.A.* 2C:18-2, for the August 9, 1987 offenses (R-1).

On April 11, 1988, the petitioner retracted his plea of not guilty and entered a plea of guilty to the three burglary counts of the indictments. The remaining counts were dismissed (R-2 & R-5). On May 20, 1988, the petitioner was sentenced to be placed on probation for three years, to serve 354 days in the county jail, and to pay a $30 Violent Crimes Compensation Board Penalty on each count (total $90) (R-2 & R-5). The petitioner served nine and one-half months of his sentence, paid his penalties, and was released from probationary supervision early for good behavior, in March 1990.

The petitioner is a 20-year-old high school graduate who resides with his mother in Bridgeton. From January 1988 until April 1988, he worked as a kitchen utility worker at the Claridge Hotel and Casino. He terminated this employment upon his incarceration. Upon his release, he obtained two jobs outside the casino industry, and in October 1989, he began his current employment as a food line server at Resorts International Hotel and Casino. His employment evaluations have been satisfactory.

The petitioner played football in high school. The offenses occurred during the summer after his high school graduation when he was 18 years old. He has a three-year-old child whom he supports. He has not had any prior or subsequent involvement with the law.

The Division did attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and

integrity. As such, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in substantial regard. He admitted his misconduct but tried to minimize his involvement in the burglaries. Accordingly, I am persuaded to accept the petitioner's testimony in substantial part.

I am persuaded that his misconduct was, in part, due to immaturity. I am also inclined to believe that it was the result of inexperience and giving in to peer pressure. The petitioner has since severed his relationships with these individuals and believes he has learned from his incarceration.

FINDINGS OF FACT

1. On August 9, 1987, the petitioner helped a friend, Kenneth Walden, burglarize a home at 78 Summit Avenue in Bridgeton. Nothing was taken from the home.

2. Later on August 9, 1987, the petitioner helped Mr. Walden burglarize the home at 7 Suncrest Avenue in Bridgeton.

3. During both burglaries the petitioner remained outside as a lookout.

4. On August 17, 1987, Mr. Walden burglarized the home at 11 Glenn Drive in Bridgeton and stole a stereo system valued at $900.00.

5. The petitioner, knowing that the stereo system had been stolen by Mr. Walden, arranged for the sale of the stolen stereo system to Jeffrey Stewart.

6. On January 27, 1988, the petitioner was indicted by the Cumberland County Grand Jury and was charged in Indictment No. 88-01-0064-I/A with one count of theft by unlawful taking (third degree), in violation of

N.J.S.A. 2C:20-3, and one count of burglary (third degree), in violation of *N.J.S.A.* 2C:18-2, for the August 17, 1987 offense.

7. On March 1, 1988, the petitioner was indicted by the Cumberland County Grand Jury and was charged in Indictment No. 88-03-0223-I/B with two counts of burglary (third degree), in violation of *N.J.S.A.* 2C:18-2, one count of theft by unlawful taking, in violation of *N.J.S.A.* 2C:20-3, and one count of attempted burglary, in violation of *N.J.S.A.* 2C:5-1 and *N.J.S.A.* 2C:18-2, for the August 9, 1987 offenses.

8. On April 11, 1988, the petitioner retracted his plea of not guilty and entered a plea of guilty to the three burglary counts of the indictments. The remaining counts were dismissed.

9. On May 20, 1988, the petitioner was sentenced to be placed on probation for three years, to serve 354 days in the county jail, and to pay a $30 Violent Crimes Compensation Board Penalty on each count (total $90). The petitioner served nine and one-half months of his sentence, paid his penalties, and was released from probationary supervision early for good behavior, in March 1990.

10. The petitioner is a 20-year-old high school graduate who resides with his mother in Bridgeton. From January 1988 until April 1988, he worked as a kitchen utility worker at the Claridge Hotel and Casino. He terminated this employment upon his incarceration.

11. Upon his release from incarceration, he obtained two jobs outside the casino industry, and in October 1989, he began his current employment as a food line server at Resorts International Hotel and Casino. His employment evaluations have been satisfactory.

12. The petitioner played football in high school. The offenses occurred during the summer after his high school graduation when he was 18 years old.

13. He has a three-year-old child whom he supports.

14. He has not had any prior or subsequent involvement with the law.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c.95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . .
>
> *N.J.S.* 2C:20-1 *et seq.* (theft and related offenses which constitute crimes of the second or third degree);
>
> . . .
>
> g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> . . . .
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and

personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . .

e. 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.

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. . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of *N.J.S.A.* 2C:20-3, theft by unlawful taking, which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from continued licensure.

(A) *N.J.S.A.* 5:12-86c(1) and *N.J.S.A.* 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1)

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mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends, by means of section 86g, that the petitioner's taking or sale of property taken during the burglaries constitutes a violation of *N.J.S.A.* 2C:20-3, which under the circumstances disqualifies the petitioner from licensure.

N.J.S.A. 2C:20-3, Theft by unlawful taking or disposition, provides in pertinent part:

> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

The Division established, and the petitioner admitted, that he participated in two burglaries as a lookout on August 9, 1987. Burglaries, to be disqualifying offenses pursuant to *N.J.S.A.* 5:12-86c(1), must constitute at least crimes of the second degree. In this case, the burglaries were only crimes of the third degree and therefore are not automatic statutory disqualifiers. The Division is thus attempting to establish that the petitioner is disqualified from licensure for the commission of a theft offense; specifically, *N.J.S.A.* 2C:20-3, theft by unlawful taking. Unfortunately, the Division has failed to establish that any property was taken during the course of the two burglaries in which the petitioner participated on August 9, 1987.

That leaves us with the burglary of August 17, 1987. The petitioner stated that his only involvement in this burglary was that he helped Mr. Walden sell the property after the burglary. The petitioner plead guilty to this count of burglary because he believed he was an accomplice to the burglary. This, however, does not establish a theft offense under *N.J.S.A.* 2C:20-3. Pursuant to the New Jersey Code of Criminal Justice, *N.J.S.A.* 2C:20-1 *et seq.*, Theft and Related Offenses, an intermediary who knowingly arranges for the sale of stolen property is guilty of a separate substantive offense and is not an accomplice to larceny (theft by unlawful taking in violation of *N.J.S.A.* 2C:20-3). *N.J.S.A.* 2C:20-2 provides that conduct denominated theft in this chapter constitutes a single offense, but each episode or transaction may be the subject of a separate prosecution and conviction. Under *N.J.S.A.* 2C:20-7 and 7.1 an individual who knowingly arranges for the sale of stolen property may be found guilty of receiving stolen property and/or fencing, respectively. Pursuant to *N.J.S.A.* 2C:20-7, a person is guilty of receiving stolen property if "he knowingly receives or brings into this State movable property of

another knowing that it has been stolen, or believing that it is probably stolen." A person is guilty of "fencing" or "dealing in stolen property" if "he traffics in, or initiates, organizes, plans, finances, directs, manages or supervises trafficking in stolen property." N.J.S.A. 2C:20-7.1. Although receiving and fencing stolen property are designated as "thefts" under the statute, they are offenses distinct from the prior theft/larceny. Courts have defined the elements of larceny as: "the wrongful or fraudulent taking and carrying away by any person of the personal property of another, from any place, with fraudulent intent to deprive the owner of his property, and the property must be taken without the consent of the owner." *State v. Green*, 170 *N.J. Super.* 292, 294 (App. Div. 1979).

Relevant case law on the issue supports the delineation of these offenses. In *State v. Rachman*, 68 *N.J.L.* 120, 122 (1902), the court held that "our statute makes larceny and the receiving of stolen goods, knowing them to have been stolen, separate offenses." The receiver of stolen goods and the thief are not accomplices. *State v. Vanderhave*, 47 *N.J. Super.* 483, 486 (App. Div. 1957). See also, *State v. Fox*, 12 *N.J. Super.* 132, 138 (App. Div. 1951). "The larceny and receiving being offenses of separate and inconsistent nature, there results the legal concept that the receiver must be someone other than the thief." Vanderhave at 486.. To prove that a defendant was a "fence" rather than the actual thief there must be sufficient evidence to show that the theft was committed by a person other than the defendant. *State v. Dancyger*, 29 *N.J.* 76, 87 (1959).

Larceny or theft by unlawful taking is a separate statutory offense from the sale of stolen property. An individual who knowingly arranges for the sale of stolen property is guilty of receiving or fencing stolen property pursuant to *N.J.S.A.* 2C:20-7 and 7.1. The Division has failed to establish the offense of theft by unlawful taking; however, the facts presented do establish the offense of fencing. Both theft by unlawful taking and fencing are theft offenses listed in *N.J.S.A.* 2C:20-1 *et seq*. They are both, therefore, listed statutory disqualifiers pursuant to the same language contained in *N.J.S.A.* 5:12-86c(1) if the offense constitutes a crime of the second or third degree.

The Division established, and the petitioner admitted during his testimony, that he knowingly helped Mr. Walden sell the stereo system valued at $900 which Mr. Walden had stolen, and that the petitioner knew the property had been stolen Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of *N.J.S.A*

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2C:20-7.1b. I further **CONCLUDE** that, pursuant to *N.J.S.A.* 2C:20-2b(2)(a), the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to *N.J.S.A.* 5:12-86c(1) and 86g.

(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 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 or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the applicant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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.

In regard to the first criterion, Adrian Lindsey is a casino hotel registrant and is employed as a food line server. He has applied to become licensed as a maintenance and cleaning person; however, he desires to upgrade to a blackjack or craps dealer. As such, he does not have direct responsibilities for actual gaming activities nor does

he come in contact with casino patrons at this time; however, he will have these responsibilities and contact if he should become licensed.

Second, the petitioner committed a violation of *N.J.S.A.* 2C:20-7.1, fencing, over a one-month period prior to his employment in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The petitioner participated in several burglaries along with Mr. Walden. After committing a subsequent burglary, Mr. Walden had the petitioner assist him in selling stolen property.

Fourth, the petitioner's misconduct occurred in August 1987, when it ceased.

Fifth, the petitioner was 18 years old at the time of the first offense. I believe immaturity was a factor in this case. The petitioner gave in to peer pressure.

Sixth, the petitioner's misconduct involving several offenses in a one-month time-period was isolated in nature. He has not committed any other violations of the criminal laws.

Seventh, as indicated above, the petitioner gave in to peer pressure and assisted Mr. Walden in committing the offenses. The petitioner has since severed his relationships with these individuals and believes he has learned from his incarceration.

Eighth, the petitioner served nine and one-half months of his sentence, paid his penalties, and was released from probationary supervision early for good behavior, in March 1990. He has thus been off probationary supervision for only two months. He is employed in the industry as a food line server, and his employment evaluations have been satisfactory. He supports a three-year-old child.

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

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(C) *N.J.S.A.* 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Lindsey 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 Hotel, Inc. for a Casino License*, 10 *N.J.A.R.* 244, 248 (1979). 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*, 10 *N.J.A.R.* 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. *Id.* at 296.

It is not readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. While the misconduct did not involve his licensed employment, the underlying conduct reflects a total disregard for the property of others. He knowingly participated in two burglaries and he helped sell property taken during a third burglary. While the petitioner has fully accepted responsibility for his misconduct and is now employed in the casino industry, he has only been off probation for two months. Accordingly, the petitioner has not established by clear and convincing evidence that he presents no risk to the public nor to the integrity of the gaming industry in this State. The petitioner has not established that he has earned the privilege of licensure. An examination of the whole person does not clearly and convincingly establish that Mr. Lindsey is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. *See, Boardwalk Regency Corp.*

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

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DISPOSITION

It is **ORDERED** that the application of Adrian Lindsey for the issuance of a casino employee license be **DENIED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 4, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

6/6/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 0 8 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

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DOCUMENTS IN EVIDENCE

For the Petitioner:

None

For the Respondent:

R-1 Superior Court, Cumberland County, Indictment No. 88-03-0223-I/B

R-2 Superior Court, Cumberland County Judgment of Conviction, dated May 20, 1988

R-3 Bridgeton Police Department Investigation Report, dated August 9, 1987

R-4 Superior Court, Cumberland County Indictment No. 88-01-0064-I/A

R-5 Superior Court, Cumberland County Judgment of Conviction, dated May 20, 1988

R-6 Bridgeton Police Department Investigation Report, dated August 17, 1987

R-7 Bridgeton Police Department Supplementary Investigation Report, dated December 18, 1987

R-8 Bridgeton Police Department Supplementary Investigation Report, dated December 23, 1987

WITNESSES

For the Petitioner:

Adrian Lindsey, the petitioner

For the Respondent:

Adrian Lindsey, the petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-269
APPLICATION NO. 072357-21
OAL DOCKET NO. CCC 09094-89
(CCC 03547-89 ON REMAND)
ORDER NO. 90-41-6

APPLICATION OF JENNINGS LOVE
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 October 17, 1990,

IT IS on this 31st day of October 1990, ORDERED that the initial decision's conclusion that the applicant failed to establish his good character, honesty and integrity is rejected for the reasons stated on the record of the Commission's proceedings; and

IT IS FURTHER ORDERED that the initial decision is also rejected because it would require the Division of Gaming Enforcement, by a preponderance of the evidence, to draw into question an applicant's good character, honesty and integrity when, in fact, the only burden of proof bearing upon character is that borne by the applicant; namely, that he demonstrate his good character by clear and convincing evidence regardless of the quantum of proof adduced by the Division; and

ORDER NO. 90-41-6

IT IS FURTHER ORDERED that the application for a non-experiential casino employee license (gaming) is granted substantially for the reasons stated on the record by the Commission.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC-09094-89
ON REMAND FROM CCC-03547-89
AGENCY DKT. NO. 89-EA-269

CASINO CONTROL COMMISSION

JENNINGS LOVE,

Petitioner,

vs.

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

Respondent.

JENNINGS LOVE, petitioner, pro se

NORMA L. STANCIL, Deputy Attorney General for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: JULY 23, 1990 Decided: AUGUST 31, 1990

OAL DKT. NO. CCC-09094-89

BEFORE **JOSEPH E. KANE**, ALJ:

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) objecting to the issuance of a casino employee license to petitioner. The Division alleges that petitioner lacks the requisite good character, honesty and integrity required for licensure.

PROCEDURAL HISTORY

The Division filed its letter of objection with the Commission on December 10, 1988. Petitioner requested a hearing on May 1, 1989 and on May 9, 1989 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled for September 7, 1989 by Lillard E. Law, ALJ at which time petitioner failed to appear. On November 20, 1989 the matter was remanded back to OAL to be heard as a contested case. The hearing was held on July 23, 1990 before Joseph E. Kane, ALJ. The record was closed on July 23, 1990.

ISSUES

The Division requested that the prehearing order be amended to eliminate issues (A) and (B). Thus, the only issue in this matter is whether petitioner possesses the requisite good character, honesty and integrity required of a licensee by N.J.S.A. 5:12-89b(2).

FINDINGS OF FACT

Based upon the testimony and documents proffered during the course of the hearing on July 23, 1990 the below represents **FINDINGS OF FACT** in this matter.

The sole issue in this matter is whether petitioner can affirmatively demonstrate that he possesses the requisite good character, honesty and integrity to qualify to hold a casino license. Petitioner, who is now 49 years old, has lived in Atlantic City all of his life. He attended Casino Dealer's School completing the hours required for certification as a craps dealer, however, he subsequently failed the course.

Petitioner's history of arrests and convictions spands some 24 years beginning in 1962. Then at the age of 21, he regularly was arrested and/or convicted for a series of offenses which include possession and use of CDS, larceny and aggravated assault. In 1962 petitioner pled guilty to an offense which is the equivalent of use and possession of a controlled dangerous substance, marijuana. Subsequent arrests and convictions for narcotic offenses resulted in petitioner being sentenced to state prison in 1971.

A common thread which weaved throughout petitioner's testimony was that although he was found or pled guilty to the offenses set forth in Exhibits R-1 thru R-11, he was nonetheless not guilty. On February 20, 1967 a police raid of a house in which petitioner was sleeping resulted in his arrest despite his protestations that he was unaware that the other inhabitants possessed illegal drugs. As a result of an incident which occurred on December 12, 1986 petitioner was charged and later pled guilty to grand larceny wherein petitioner and an associate stole a typewriter from Sears. As to this incident, petitioner disavowed any knowledge that his friend was stealing a typewriter despite the fact that he accompanied his friend while walking out of the Sears store, typewriter in hand. On September 28, 1973 petitioner was returned to state prison for failing to complete a drug rehabilitation program at NARCO (Institute for Human Development). Petitioner reasoned that he did not need the treatment program and that he was "too mature" for the program. On August 31, 1978 petitioner was charged by the Atlantic City Police Department with possession of a weapon. Petitioner had requested that some uninvited guests leave his home. When the guests failed to abide by petitioner's request, petitioner stated that he would have to "make them leave" and apparently successfully pursuaded them to do so by displaying an ice pick. On January 5, 1986 petitioner was arrested and charged with aggravated assault as a result of an incident between him and his wife. At

that time, he claims that he "just pushed her" at which time she slipped and fell and sustained the majority of her injuries.

In 1976 petitioner was employed in a federal grant program which rehabilitated homes in Atlantic City. His involvement in this program was for only two years since the funds were eliminated, however, during this period petitioner earned the respect and admiration of his supervisor.

For approximately the last four to five years, petitioner has been attending Atlantic Community College taking courses which will eventually qualify him as a paralegal. He plans to attend Rutgers University at some point in the future to further his legal studies. He has held jobs as a painter and "decorator" working in various Atlantic City casinos as an employee of a casino subcontractor. He is the self-styled founder and president of the Atlantic City Opportunity Development Association which appears to be an advocacy organization with a rather broad mandate to advocate for the rights of senior citizens, youth of Atlantic City and any individual needing housing. He resigned as an officer in this organization to run for Councilmen-at-Large in Atlantic City in June of 1990. From 1984 to 1986 he was the president of the Atlantic County Transportation Authority Tenant's Association.

Petitioner testified that since 1986, he has been working as a self-employed painter and wallpaper hanger. The Division of Gaming Enforcement agent who conducted petitioner's personal interview on February 19, 1988 testified that the petitioner had indicated

that he had been unemployed for the two years prior to his personal interview and had been supporting himself with funds from the Atlantic City Welfare Office and food stamps.

CONCLUSIONS OF LAW

Section 5:12-86b(2) of the Act requires that whenever the Division of Gaming Enforcement raises as an issue the good character, honesty and integrity of the petitioner, it is then petitioner's burden to show by clear and convincing evidence that he possesses the requisite good character, honesty and integrity required for licensure under the Act. In accordance with the strict regulatory provisions intended by the legislature it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure. Clear and convincing falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here the trier of fact should have a firm belief that the facts presented by petitioner are true. The standard requires more than the mere balancing of probabilities but less than absolute certainty. A reasonable certainty is required. Lapre vs. Caputo, 131 N.J. Super. 118 (Law Div. 1974).

It is clear that from the record above, between the years of 1962 and 1986 petitioner could not have met his burden to demonstrate by clear and convincing evidence that he possesses the character traits required of Section 89b of the Act. The issue more narrowly defined is whether petitioner can now

demonstrate that since 1986 he is qualified to hold a casino license. Petitioner's honesty was drawn into question when Agent Kazmierski testified that during her telephone interview with petitioner, he testified that he had been receiving welfare for a period of two years. Petitioner testified that during this time, approximately February of 1986 to 1988, he had worked as a self-employed painter and wallpaper hanger. Petitioner offered no rebuttal testimony to explain or clarify Agent Kazmierski's testimony.

An individual of good character is willing to confront past transgressions rather than to continually deny that the events occurred. In the instant matter, petitioner repeatedly protested his innocence to those charges of which he had either entered guilty pleas or had been found guilty. His testimony was contradictory in that he admitted that he was a drug addict and yet as it pertains to the drug charges and arrests, he disavowed any involvement and refused to continue with his course of treatment at NARCO stating instead that he was "too mature" for that type of treatment.

As more fully set forth above, it is petitioner's affirmative duty to come forth and demonstrate by clear and convincing evidence that he does possess the requisite good character, honesty and integrity needed for licensure. Petitioner's documentary evidence was voluminous, however, it was not relevant or, more importantly, recent in time.

The State has, by a preponderence of the credible evidence, drawn into question the good character, honesty and

integrity of the petitioner. Despite petitioner's criminal history, it would be possible for him to come forth and demonstrate the requisite Section 89b(2) factors needed for licensure. The lack of current and more importantly, relevant evidence fails to overcome the State's demonstration of a lack of good character, honesty and integrity.

Accordingly, I **HOLD** that a casino employee license should not issue to the petitioner for the reasons enumerated above. **IT IS SO HELD** this 31st day of August, 1990.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 31, 1990
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

OAL DKT. NO. CCC-09094-89

9/7/90
DATE

Kim Wade
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 10 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

pas

CCC-09094-89

EXHIBITS

FOR PETITIONER:

P-1 Letter from Frank McCarthy dated December 22, 1976;
P-2 Letter from Thomas J. Brady, Jr. dated October 2, 1978;
P-3 Letter from Elaine Hill Molock dated August 30, 1977;
P-4 Letter from Elaine Bennis dated August 25, 1975;
P-5 Letter from Nona C. Porter dated August 24, 1977;
P-6 Letter from Sallye Nordling dated April 10, 1990;
P-7 Letter from Andrea Abramowitz dated May 2, 1990;
P-8 Letter from Gyrene Williams and Gene Dowing dated April 23, 1990;
P-9 Letter from Suzanne J. Coia, undated;
P-10 Letter from Laura A. Tortella dated April 10, 1990;
P-11 Letter from Jennings Love, Council-at-Large candidate;
P-12 Jennings Love, Council-at-Large platform letter;
P-13 Jennings Love, Council-at-Large flyer;
P-14 Memorandum from Jennings Love dated February 11, 1986;
P-15 Plaque presented to Jennings Love;

FOR REPONDENT:

R-1 Criminal Record of Jennings Love;
R-2 FBI record check of Jennings Love;
R-3 Clerk of Atlantic County Court Criminal Record;
R-4 Clerk of Atlantic County Court Criminal Record;
R-5 Clerk of Atlantic County Court Criminal Record;
R-6 Clerk of Atlantic County Court Criminal Record;
R-7 Atlantic City Police Department Investigation Report;
R-8 Atlantic City Police Department Arrest Report;

R-9 Atlantic City Police Department Investigation Report;
R-10 Atlantic City Police Department Arrest Report;
R-11 SBI Check;
R-12 Personal History Disclosure Form-2A;

WITNESSES

FOR PETITIONER:
JENNINGS LOVE

FOR RESPONDENT:
AGENT RITA KAZMIERSKI, DIVISION OF GAMING ENFORCEMENT
JENNINGS LOVE

CASINO CONTROL COMMISSION DECISIONS

JULY - DECEMBER 1990

M - Z

PREPARED BY THE LEGAL DIVISION

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
57 ~~71.~~	Application of Ykawanda M. Maiden for a casino employee license	OAL CCC 05844-89 Agency 89-EA-392	12/06/90	797
58 ~~72.~~	State of New Jersey v. Nilda Maldonado, a/k/a Maldonado Carides	OAL CCC 00469-90 Agency 90-224	11/30/90	803
59 ~~73.~~	State of New Jersey v. Robert W. McConkey	OAL CCC 00172-90 Agency 89-38	11/08/90	821
60 ~~74.~~	State of New Jersey v. Kimberly A. McDermott	OAL CCC 02845-90 Agency 90-176	09/20/90	831
61 ~~75.~~	Application of Mark McDuffie for a casino key employee license	OAL CCC 07629-89 Agency 90-EA-80	10/17/90	846
62 ~~76.~~	Application for renewal of the casino employee license of Bethanne McFadden	OAL CCC 01728-90 Agency 90-EA-335	11/08/90	852
63 ~~77.~~	Application for renewal of the casino key employee license of Lawrence L. McGuire	OAL CCC 04089-89 Agency 84-EA-21	09/10/90	859
64 ~~78.~~	Application of James R. Mee, Jr. for a casino employee license	OAL CCC 08609-89 Agency 89-EA-299	11/30/90	880
65 ~~79.~~	Application for renewal of the casino employee license of Michael A. Miller	OAL CCC 00152-90 Agency 90-EA-99	12/03/90	888
66 ~~80.~~	Application for renewal of the casino employee license of Robert S. Montgomery	OAL CCC 00939-89 Agency 89-EA-300	11/28/90	902
67 ~~81.~~	Application of Network Construction Co., Inc., for a casino service industry license and Qualification of Ricardo Thompson	OAL CCC 02850-90 Agency 90-CSI-15	12/21/90	912

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
68	82. State of New Jersey v. Raul Nieves	OAL CCC 04400-89 CCC 01279-89 (on remand) Agency 89-218	11/08/90	921
	83. State v. Nicholas Niglio (See, State v. Boardwalk Regency Corp.)			150
69	84. State of New Jersey v. Margaret L. Olsson	OAL CCC 01657-90 Agency 90-262	12/10/90	929
70	85. State of New Jersey v. David Oslin	OAL CCC 05778-88 Agency 88-109(B)	12/03/90	945
	86. Denise E. Ovens (See State v. Denise E. Vasilieff)			1451
71	87. State of New Jersey v. Beverly E. Pascal	OAL CCC 01278-89 Agency 89-212	11/26/90	956
72	88. Application for renewal of the casino employee license of Christina W. Paul	OAL CCC 00555-89 Agency 89-EA-194	12/12/90	968
73	89. Application of Joseph F. Pepe for a casino employee license	OAL CCC 03624-89 Agency 89-EA-391	10/30/90	985
74	90. State of New Jersey v. Drew M. Perry	OAL CCC 07551-89 Agency 89-434	12/14/90	995
75	91. Application of Lynda J. Peterson, a/k/a Cairnes for a casino employee license	OAL CCC 07627-89 Agency 90-EA-76	11/07/90	1007
76	92. Application of Karen L. Phillips for a casino employee license	OAL CCC 00428-90 Agency 90-EA-194	11/08/90	1020
77	93. Application for renewal of the casino employee license of Ralph M. Pitts	OAL CCC 04023-89 Agency 89-EA-409	10/30/90	1028

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
78	~~94~~. State of New Jersey v. Tina M. Quick	OAL CCC 06211-89 Agency 90-24	09/26/90	1037
79	~~95~~. Application for renewal of the casino employee license of Pedro L. Ramos, Jr.	OAL CCC 07636-89 Agency 90-EA-88	11/27/90	1048
80	~~96~~. State of New Jersey v. Daniel Rivera	OAL CCC 08848-89 Agency 89-288	11/27/90	1069
81	~~97~~. State of New Jersey v. Raul A. Roman	OAL CCC 09405-89 Agency 90-157	11/08/90	1078
82	~~98~~. State of New Jersey v. Nathaniel T. Ross	OAL CCC 09492-89 Agency 90-162	12/11/90	1084
83	~~99~~. State of New Jersey v. Luis Arturo Ruiz, a/k/a Luis A. Santiago	OAL CCC 06212-89 Agency 90-40	12/04/90	1093
84	~~100~~. Application of Frederick D. Russell for a casino employee license	OAL CCC 08223-89 Agency 90-EA-90	12/18/90	1105
85	~~101~~. State of New Jersey v. Glenn Salsberg	OAL CCC 03902-89 Agency 89-343	12/14/90	1118
	~~102~~. State of New Jersey v. Luis A. Santiago (See, State v. Luis Arturo Ruiz)			1093
86	~~103~~. Application of Arthur J. Saraceno for a casino employee license	OAL CCC 06825-89 Agency 90-EA-68	08/09/90	1130
87	~~104~~. Application of Thomas E. Schaffer, Jr. for a casino employee license	OAL CCC 03697-90 Agency 90-EA-351	12/03/90	1139
88	~~105~~. State of New Jersey v. Gary J. Segars, Jr.	OAL CCC 00426-90 Agency 90-196	10/16/90	1150

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
89	~~106.~~ Application for renewal of the casino service industry license of Charles Shaid of New Jersey, Inc. and State of New Jersey v. Charles Shaid of New Jersey, Inc., and Elliot B. Shaid	OAL CCC 05096-90 Agency 90-500; 90-CSI-25	09/27/90	1179
90	~~107.~~ Application for renewal of the casino employee license of Diane R. Shanks	OAL CCC 02853-90 Agency 90-EA-293	10/16/90	1201
91	~~108.~~ Application for renewal of the casino employee license of Richard T. Silbert	OAL CCC 00650-89 Agency 89-EA-289	09/20/90	1216
92	~~109.~~ State of New Jersey v. Albert Smith	OAL CCC 01816-90 Agency 90-256	12/28/90	1231
93	~~110.~~ State of New Jersey v. Kenneth P. Smith	OAL CCC 08353-89 CCC 04161-89 (on remand) Agency 89-289	12/10/90	1240
	~~111.~~ Resorts International Hotel, Inc. v. State of New Jersey, Casino Control Commission (See, Greate Bay Hotel & Casino, Inc., t/a Sands, and Resorts International Hotel, Inc.			602
94	~~112.~~ State of New Jersey v. James H. Streeper	OAL CCC 02846-90 Agency 85-195	09/12/90	1251
95	~~113.~~ Application of Jeffrey L. Strouse for a casino employee license	OAL CCC 00430-90 Agency 90-EA-139	11/02/90	1260
96	~~114.~~ Application of Lonnie Taylor for a casino employee license	OAL CCC 09491-89 Agency 90-EA-92	12/20/90	1278

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
97 115.	Application of Guy Thomas for a casino employee and State of New Jersey v. Guy Thomas	OAL CCC 01466-89; CCC 00241-89 (Consolidated) Agency 89-EA-267; 89-255	08/14/90	1291
98 116.	Application of Norman J. Thompson for a casino employee license	OAL CCC 09487-89 Agency 90-EA-190	09/20/90	1302
117.	Qualification of Ricardo Thompson (See, Application of Network Construction Co., Inc.)			912
99 118.	State of New Jersey v. Michael P. Tomlinson	OAL CCC 09490-89 Agency 89-344	09/21/90	1318
100 119.	State of New Jersey v. Trump Plaza Associates, t/a Trump Plaza Hotel and Casino	OAL CCC 06174-88 Agency 88-384	11/09/90	1339
101 120.	State of New Jersey v. Trump Plaza Associates, t/a Trump Plaza Hotel and Casino	OAL CCC 02290-89 Agency 89-247	12/21/90	1355
102 121.	State of New Jersey v. Allison Turner	OAL CCC 01929-90 Agency 90-167	07/24/90	1417
103 122.	Application for the renewal of the casino employee license of Steven Valentino	OAL CCC 01027-90 Agency 90-EA-231	12/18/90	1423
104 123.	Application of Maria E. Vanegas, a/k/a Maria E. Hernandez, a/k/a Maria E. Feliciano and State of New Jersey v. Maria E. Vanegas, a/k/a Maria E. Hernandez, a/k/a Maria E. Feliciano	OAL CCC 03437-89 Agency 89-EA-333; 83-295	08/30/90	1442

	NAME OF CASE	DOCKET NOS.	DATE OF ORDER	PAGE
105 ~~124.~~	State of New Jersey v. Denise E. Vasilieff, a/k/a Ovens	OAL CCC 09348-89 Agency 89-95	11/27/90	1451
106 ~~125.~~	Application of Jeannette B. Vitali for a junket representative license	OAL CCC 06210-89 Agency 87-EA-81	12/10/90	1469
107 ~~126.~~	Application of Woodsroad Management Corp., t/a Hurst Travel and Travel Dimensions for a casino service industry license and Application of Bernard Falkow for a casino key employee license	OAL CCC 03174-89 Agency 89-CSI-9; 82-EA-62	09/20/90	1480
108 ~~127.~~	Application for renewal of the casino employee license of Beverly Ann Wright	OAL CCC 00964-89 Agency 89-EA-292	08/09/90	1492

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-392
APPLICATION NO. 77199-21
OAL DOCKET NO. CCC 05844-89
ORDER NO. 90-35-3

APPLICATION OF YKAWANDA M. MAIDEN
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of September 5, 1990,

IT IS on this 6th day of December 1990, ORDERED that the initial decision is modified as follows:

> To include a more thorough consideration of the rehabilitation factors. Among the more significant factors to be highlighted are: that the applicant received no notice of the 1985 judgment entered against her on behalf of the Division of Unemployment, until she applied for benefits in 1988; that, by reason of her unemployment, a condition which began in August 1987 and lasted until at least November 1988 (R-1), the applicant was not in a financial position to make restitution; the applicant has made arrangements with the Division of unemployment for repayment of the debt whereby she will make regular payments of $127 per month; and the applicant was, at least as of the time of the hearing, current with the repayment schedule.

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5844-89
AGENCY DKT. NO. 89-EA-392

YKAWANDA M. MAIDEN,
Petitioner,
v.
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Leonard J. Williams, Esq., on behalf of petitioner

James J. Armstrong, Deputy Attorney General, on behalf of respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: June 21, 1990 Decided: July 17, 1990

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

This matter arises out of an objection to petitioner's licensure filed by respondent with the Casino Control Commission pursuant to N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. 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. A hearing was conducted on June 21, 1990, after which the record closed.

The questions presented are whether petitioner committed acts which constitute theft by deception in the third degree, N.J.S.A. 2C:20-4, a listed disqualifier pursuant to N.J.S.A. 5:12-86g; whether she is a person of good character, N.J.S.A. 5:12-89b(2); and finally whether she can demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h.

The essential facts are undisputed. Petitioner collected unemployment benefits from February 23, 1982 through April 21, 1983, while she was employed on a part-time basis by the Mercer County Personnel Pool. The total amount of benefits paid was $2,580 and with interest and fine assessment the total reached $4,254.74. A judgment was entered in the matter in October 1985. Some $639 of this amount has been repaid over the years when petitioner was otherwise entitled to unemployment benefits and the Division of Unemployment & Disability Insurance applied these monies to reduce her obligation. She also voluntarily paid $200 in May 1990.

Petitioner was 23 years old at the time of this incident; she is presently 31 years old. She has one dependent. Petitioner acknowledged her wrongdoing and testified that she has been gainfully employed in various part-time positions since 1983 without incident. She has never had any other involvement with law enforcement. This is the substance of the record.

Petitioner was fairly young when she committed the violation in question, and 8 years of gainful employment have passed without further incident. This one offense ought not to follow her at this late date.

Based on the foregoing, it is my conclusion that respondent has established that petitioner committed an offense listed as a statutory disqualifier, but that petitioner has proven her rehabilitation and that she is a person of good character. It is **ORDERED** that she be awarded a casino employee license.

This recommended decision may be adopted, 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 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.

800

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

7/17/90
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

7-18-90
DATE

Dolores Dost
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 20 1990
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

jz

801

EXHIBITS

For respondent:

R-1 Investigation Summary Report

R-2 Claimant's Benefit Payment and Employment Record

R-3 Claimant Ledger

R-4 Notice of Hearing

R-5 Record of Hearing

R-6 Determination and Demand for Refund of Unemployment or Disability Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation

R-7 Certificate of Debt

R-8 Claimant Inquiry

R-9 Claimant Inquiry

R-10 Personal History Disclosure Form - 2A

R-11 Name Affidavit

R-12 Claimant Inquiry

WITNESS

Ykawanda M. Maiden, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-224
REGISTRATION NO. 092710-40
OAL DOCKET NO. CCC 00469-90
ORDER NO. 90-44-11

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

Complainant,

v.

NILDA MALDONADO,
a/k/a MALDONADO CARIDES,

Respondent.

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 November 7, 1990,

IT IS on this 30th day of November 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

ORDER NO. 90-44-11

IT IS FURTHER ORDERED that Nilda Maldonado, a/k/a Maldonado Carides, 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.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC-00469-90
AGENCY DKT. NO. 90-224

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

Petitioner,

vs.

NILDA MALDONADO a/k/a
MALDONADO-CARIDES,

Respondent.

R. LANE STEBBINS, Deputy Attorney General, petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

NILDA MALDONADO, respondent, pro se

RECORD CLOSED: AUGUST 30, 1990 DECIDED: SEPTEMBER 12, 1990

BEFORE **JOSEPH E. KANE, ALJ:**

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) requesting the revocation of the casino hotel employee registration #92710-40 issued to respondent. The Division alleges that respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1).

PROCEDURAL HISTORY

The Division filed its complaint with the Commission on December 29, 1989. Respondent requested a hearing on January 12, 1990 and on January 18, 1990 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on May 25, 1990 by Jeff S. Masin, ALJ followed by a hearing which was held on August 23, 1990. The record was closed on August 30, 1990.

ISSUES

A. Did Ms. Maldonado engage in activity which automatically disqualifies her from holding a casino hotel registration, namely, did she possess a controlled dangerous substance and did she possess it with intent to distribute and engage in a conspiracy to do so? In addition, was she convicted of possession of a controlled dangerous substance with

intent to distribute in violation of N.J.S.A. 24:21-19, analogous to N.J.S.A. 2C:35-5? Does this automatically disqualify her from being registered?

B. If Ms. Maldonado would be disqualified by her conduct involving drugs, does she demonstrate through evidence presented at the hearing that she has rehabilitated herself from the disqualification, that is, that she should be permitted to be registered as permitted by N.J.S.A. 5:12-91(d)?

C. Under the facts and circumstances of this case, if Ms. Maldonado would otherwise be disqualified, do the interests of justice require a waiver of the disqualification pursuant to N.J.S.A. 5:12-91(e).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon testimony and documents proferred at the hearing held on August 23, 1990, the below represents **FINDINGS OF FACT** in this matter.

A. HAS RESPONDENT COMMITTED A DISQUALIFYING OFFENSE AS DEFINED BY SECTION 86c(1) OF THE ACT.

On June 16, 1986 at the age of 22, respondent was arrested and charged in a five count indictment with possession of cocaine and heroin with intent to distribute and conspiracy to distribute controlled dangerous substances. In sum, respondent and her boyfriend imported cocaine and heroin from New York City and then packaged and distributed the substances from their Congress Avenue, Atlantic City apartment. Respondent's boyfriend, after being released from prison for

previous narcotics violations, began distributing drugs in February of 1986. Respondent estimates that their profit was somewhere between $500 and $1,000 per day. At the time the police executed the search warrant, they confiscated 319 bags of cocaine and heroin, $784 in cash and narcotics paraphenalia which the respondent indicated was used to cut, stamp and package the illicit drugs. The $784 represented some of the profit from the operation since neither the respondent nor her boyfriend were employed at the time.

On August 4, 1986 the respondent pled guilty to one count of possession of controlled dangerous substance with intent to distribute. Respondent was given a sentence of 180 days in the Atlantic County Jail; 18 months probation; $30.00 payment to the Violent Crimes Compensation Board. She served 90 days in the Atlantic County Jail and was released on probation for 18 months.

Section 86c(1) of the act sets forth certain enumerated disqualifiers which, if proven by a preponderance of the credible evidence, constitutes a bar to respondent's continuing licensure. Considering the proofs submitted by the State as well as respondent's admission to the conduct set forth above, I **FIND** that respondent's conviction for possession of a controlled dangerous substance with intent to distribute, N.J.S.A. 24-21.19(a)(1) constitutes an 86c(1) disqualifier thus making respondent ineligible to continue to hold her hotel registration.

B. HAS RESPONDENT DEMONSTRATED REHABILITATION AS PERMITTED BY SECTION 91(d) OF THE ACT.

Despite the fact that respondent has committed a disqualifying offense pursuant to Section 86c(1) of the Act, she may nevertheless retain her hotel registration provided that she is able to demonstrate her rehabilitation by clear and convincing evidence. Section 91(d) of the Act sets forth the eight enumerated factors which are utilized in evaluating whether an individual has achieved rehabilitation. It is the burden of the respondent to affirmatively demonstrate rehabilitation by not only her own testimony, but also by the testimony of friends and associates who have first hand knowledge of the efforts and achievements made towards rehabilitation. Unless this tribunal is supplied with such evidence a finding of rehabilitation cannot be found or implied by the respondent's lack of involvement with the criminal justice system since the disqualifying offense.

In the instant matter, the record was held open for a period of one week in order to permit the respondent to introduce evidence of her rehabilitation. No such evidence was received and thus, respondent's testimony alone will serve as the basis to determine the issue of rehabilitation.

Applying the eight factors set forth in Section 91(d) of the Act, **I FIND** as follows:

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

Respondent is currently employed at Bally's Park Place Hotel Casino in the position of a public area porter. This position, involves daily and regular contact with the public and

casino patrons. Accordingly, the primary concern must be whether respondent has clearly and convincingly demonstrated rehabilitation in order to obviate the concern that she would repeat the conduct for which she was previously indicted and convicted. Respondent testified that she knew it was wrong to be distributing drugs, however, when the enterprise began to bring in between $500 and $1,000 a day, the financial gain quickly took priority over that of respondent's concern for the illegality of the venture. This conduct and manner of thinking seriously draws into question whether respondent should be permitted to hold a registration which permits contact with a large amount of individuals on a daily basis.

2. The nature and seriousness of the offense or conduct.

3. The circumstances under which the offense or conduct occurred.

The offense, that of possessing and distributing a controlled dangerous substance to the extent of respondent's involvement is a serious crime. The circumstances offered no mitigation of the seriousness or nature of the offense since respondent admitted that drugs were being distributed both to support her heroin addiction as well as for financial gain.

4. The date of the offense or conduct.

Respondent was arrested on June 16, 1986, indicted on June 30, 1986 and entered a plea of guilty to possession of a controlled dangerous substance with intent to distribute on August

4, 1986. She then served 90 days in the Atlantic County Jail after which she was placed on probation for a period of 18 months.

5. The age of the registrant when the offense or conduct was committed.

The respondent was 22 years old when she was arrested in 1986, she is now 26 years old.

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

The offense which serves the basis of the within action is the only crime to which respondent has ever been arrested or convicted. But for the severity and nature of the offense, such a lack of any arrest or other convictions would mitigate heavily in respondent's favor.

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

Under the circumstances set forth above, there are no social conditions which 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.

After entering the Atlantic County Jail on June 17, 1986 respondent experienced withdrawal from her heroin addiction. While incarcerated she did not become involved in Narcotic's Anonymous meetings, however, when leaving the facility she did attend two weeks of a substance abuse course at the Institute For Human Development in Atlantic City, New Jersey. Respondent claims that she has been drug free since the date of her arrest, June 16, 1986. Respondent lives at home with her parents and five year old son who she has been supporting through her employment at Bally's for the last year. She has no involvement with community activities.

Essential to a claim of rehabilitation is the willingness and ability of the individual to admit to him or herself and to others that a crime has occurred. In the instant matter, both on respondent's personal history disclosure form and job application for Bally's, she intentionally stated that she had never been arrested or convicted of any crime. As of the date of the hearing, respondent admitted that her employer, Bally's is unaware of her past arrest and conviction record. It is inconsistent with a claim of rehabilitation to provide false information concerning the offense from which one claims he or she is rehabilitated.

The fact that respondent has not been arrested and has been drug free for a period of four years mitigates heavily in her favor. Nevertheless, these two facts alone do not demonstrate rehabilitation by clear and convincing evidence. Her intentional omission of the 1986 conviction from both the Bally's

application and her personal history disclosure form seriously draws into question her veracity and demonstrates her lack of rehabilitation. The offense committed by the respondent, that of selling and distributing cocaine and heroin in such amounts so as to turn a profit of between $500 and $1,000 a day requires a showing of rehabilitation by clear and convincing evidence especially when respondent desires to work in a position which has regular and daily contact with the public within the casino industry. Respondent's failure to produce sufficient evidence to meet her burden coupled with questionable veracity and failure to provide information to her employer and the Commission concerning her conviction leads to the inevitable conclusion that she has failed to rehabilitate herself.

SUMMARY

Accordingly, for the reasons set forth above I **FIND** that the respondent, has committed an offense in 1986, that of possession of a controlled dangerous substance with intent to distribute which constitutes a statutory disqualifier pursuant to Section 86c(1) of the Act. I **FURTHER HOLD** that respondent has failed to demonstrate her rehabilitation pursuant to Section 91(d) of the Act. I **HEREBY REVOKE** respondent's hotel registration #92710-40.

C. IS THE RESPONDENT ENTITLED TO A WAIVER PURSUANT TO SECTION 91(e) OF THE ACT.

Section 91(e) of the Act bestows upon the Commission the discretion to grant a waiver to a registrant who has committed an 86c(1) disqualifying offense and has not shown rehabilitation pursuant to Section 91(d) of the Act, provided that the waiver is consistent with the public policy of the Casino Control Act and is granted in the interest of justice.

Section 91(e) of the Act provides that:

> "The commission may waive any disqualification criterion for a casino hotel employee consistent with the public policy of this act and upon a finding that the interest of justice so require".

The waiver provision applies only to casino hotel employees who perform only service or custodial duties not directly related to operations of the casino. (See Section 8 of the Act).

Based upon the **FINDINGS OF FACT** set forth above, a waiver can be granted provided that the Commission specifically finds that waiver would be consistent with both this article's public policy and be in the interests of justice. The Casino Control Act, P.L.1987 c.409, 1986 Senate No. 2895 included the following language:

> 1. Short Title, Declaration of Policy and Legislative Findings...
>
> (b) The Legislature hereby finds and declares to be the public policy of this State, the following:
>
> (6) 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...

(7) Legalized casino gambling in New Jersey can attain, maintain and retain integrity, public confidence and trust, and remain compatible with the general public interest only under such a system of control and regulation as insures, so far as practicable, the exclusion from participation therein of persons with known criminal records, habits or associations...

(9) Since casino operations are especially sensitive and in need of public control and supervision, and since it is vital to the interests of the State to prevent entry, directly or indirectly, into such operations or the ancillary industries regulated by this act of persons who have pursed economic gains in an occupational manner or context which are in violation of the criminal or civil public policies of this State, the regulatory and investigatory powers and duties shall be exercised to the fullest extent consistent with law to avoid entry of such persons into the casino operations or the ancillary industries regulated by this act...

(13) It is in the public interest that the institution of licensed casino establishments in New Jersey be strictly regulated and controlled pursuant to the above findings and pursuant to the provisions of this act, which provisions are designed to engender and maintain public confidence and trust in the regulation of licensed enterprises... Casino Control Act, P.L. 1987 c.409, 1986 Senate No. 2985.

The 1987 Superior Court, Appellate Division decision in State of New Jersey, Dept. of Law & Public Safety, Div. of Gaming Enforcement vs. Hannah, 221 N.J. SUPER. 98 (App. Div. 1987) echoed the above cited language and required specific findings of fact to support the Commission's granting of a waiver. The Appellate Division reasoned that the legislature required conformance with this policy as a precondition to waiver of any disqualification criterion, in that any exercise of the commission's authority under Section 91(e) must be "...consistent with the public policy of this act and upon a finding that the interests of justice so require". Hannah, 221 N.J. SUPER. 98 citing N.J.S.A. 5:12-91(e).

> "In exercising its authority, the Commission must be ever mindful that the gaming industry is to be insulated from criminals so that its integrity may be maintained." Hannah, 221 N.J. SUPER. at 102, citing Matter of Hotel and Restaurant Emp. & Bartend., 203 N.J. SUPER. 297 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), cert. den. 475 U.S. 1085 (1986).

The Appellate Division in Hannah stated that the decision to waive disqualification must be supported by specific findings that waiver of disqualification criteria is consistent with the public policy of the act and that the interests of justice so require.

"The Commission's ruling cannot be supported without

> detailed findings." Hannah, 221 N.J. SUPER. at 102 (App. Div. 1987) citing NJ Bell Tel. Co. vs. CWA, etc., 5 N.J. 354, 374-79 (1950).

As to the question of when the interests of justice may require that waiver be applied, New Jersey Courts have recognized the need to resolve the necessary question of whether the provision is reasonable or equitable as applied to the individual. Dougherty vs. Dept. of Human Services, 179 N.J. SUPER. 541 (App. Div. 1981), modified 91 N.J. 1 (1982). The Dougherty court cautioned, however, that "although waiver may serve the individual,... in the long run the overall statutory purposes are better served by drawing certain fixed lines in the administration of the program." Dougherty at 9.

In the instant matter, respondent has been convicted of a crime and accordingly, a Section 86c(1) disqualifying offense which, due to the nature of the offense, must be of a particular concern for the casino industry. An individual must not be given entree into the casino industry and its patrons when there has been no demonstration of rehabilitation by clear and convincing evidence that the individual will no longer engage in the distribution of illicit drugs. Respondent's lack of veracity and credibility does not provide this tribunal with the necessary compelling facts upon which the extraordinary relief of waiver could be recommended and eventually granted by the Commission. The relief of waiver can only be granted when there is within the record, basis upon which the Commission can determine that the

integrity and public confidence in the industry will not be compromised in any way. Such a potential appears to exist in the instant matter and accordingly, given the strict regulation of the industry by the Casino Control Act, the relief of waiver in the instant matter is not appropriate and should not be granted.

For the reasons set forth above, **I FIND** that respondent was convicted of possession of a controlled dangerous substance with intent to distribute which constitutes a statutory disqualifier pursuant to Section 86c(1) of the Act. Respondent has failed to demonstrate her rehabilitation by clear and convincing evidence as required by Section 91(d) of the act. The facts and circumstances of the offense do not require that the extraordinary relief of waiver pursuant to Section 91(e) of the act should be envoked. **IT IS SO ORDERED** this 12th day of September 1990.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO**

CONTROL COMMISSION for consideration.

Sept 13, 1990
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

9/19/90
DATE

CASINO CONTROL COMMISION

Mailed to Parties:

SEP 21 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

FOR PETITIONER:

P-1 Personal History Disclosure Form 4A

P-2 Atlantic City Police Department Investigation Report Dated June 16, 1986

P-3 Atlantic County Indictment #86-06-1258-B

P-4 Judgment of Conviction & Order for Commitment

P-5 Bally's Park Place application for employment dated March 23, 1989

FOR RESPONDENT:

R-1 Certificate of Parole

R-2 Termination Certificate

R-3 New Jersey State County Data Form

WITNESSES

FOR PETITIONER:

Nilda Maldonado a/k/a Maldonado-Carides

FOR RESPONDENT:

Nilda Maldonado a/k/a Maldonado-Carides

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-38
LICENSE NO. 050044-21
OAL DOCKET NO. CCC 00172-90
ORDER NO. 90-42-6

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

Complainant,

v.

ROBERT W. McCONKEY,

Respondent.

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; and exceptions and a reply to exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 24, 1990,

IT IS on this 8th of November 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the Commission order No. 88-33-5-B, dated August 18, 1988, suspending the respondent's casino employee license is vacated; and

IT IS FURTHER ORDERED that Robert W. McConkey is permitted to retain his casino employee license substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 172-90
AGENCY DKT. NO. 89-38

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
ROBERT W. McCONKEY,
Respondent.

Ralph L. Fusco, Deputy Attorney General for the petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

John C. Grady, Esq., for the respondent (Archer and Greiner, attorneys)

Record Closed: July 26, 1990 Decided: September 10, 1990

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

PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on July 29, 1988, seeking the revocation of the casino employee license of the respondent, Robert W. McConkey. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on January 9, 1990, to be heard 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 telephone prehearing conference was held on May 8, 1990, at which time the parties agreed that the issues in this matter are:

A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: theft by deception (a third-degree offense) pursuant to N.J.S.A. 2C:20-4.

B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

C. Whether the respondent may demonstrate rehabilitation pursuant to N.J.A.C. 5:12-90h.

The hearing took place on July 26, 1990, at the Office of Administrative Law in Atlantic City, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** the facts in this matter are not in dispute.

In November 1987, the respondent drove to Kennedy Airport in New York City and left his leased vehicle in the long-term parking lot. After leaving the car, the respondent returned home by public transportation. The following day, the respondent went to work as a roulette dealer at the Claridge Casino Hotel (Claridge). After work on that day, the respondent reported that his leased car had been stolen from an Atlantic City parking lot. Mr. McConkey filled out a police report indicating that the car had been stolen and he also reported the car as stolen to the insurance company. The insurance company processed his claim and paid $6,400.00 to the car dealership and Mr. McConkey received back his security payment of approximately $300.00.

According to Mr. McConkey, he left the car at Kennedy Airport since he thought the car would not be found and he wanted to get out of the car lease agreement. Mr. McConkey gave no specific reasons as to why he wanted to get out of the car lease agreement and he denied that he was in any financial difficulty. He

stated that he could afford the lease payments. Mr. McConkey stated that he had never done anything like this, and that he had not given it a great deal of thought, nor had he spoken to anybody regarding his plan. On cross-examination, Mr. McConkey was unable to give specific answers to questions as to how he managed to get back home after he left his leased vehicle at Kennedy Airport.

After reporting his leased vehicle stolen, the respondent told his family, friends and co-workers that the car had been stolen. Mr. McConkey admitted that he never intended to reveal what he had done with the vehicle. After making the police and insurance reports, Mr. McConkey was scared since he knew he would be in serious trouble if he were caught.

In March 1988, the respondent was arrested at the Claridge and he was charged with filing a false police report and theft by deception (P-1, P-2, P-3). Thereafter, Mr. McConkey was indicted for theft by deception involving more than $500.00 (a third-degree offense), in violation of the provisions of N.J.S.A. 2C:20-4 (P-4).

The respondent applied for and was admitted into the Pretrial Intervention Program (PTI). Pursuant to the conditions of this program, he was required to make restitution to the insurance company, report monthly to a probation officer and pay a $3,000.00 penalty to the Department of Insurance. The respondent is paying the penalty to the Department of Insurance in installment payments and he has approximately eight more payments to make. In February 1990, Mr. McConkey completed the PTI and the indictment against him was dismissed (R-5, R-6, R-7, R-8, R-9).

After he was arrested, Mr. McConkey's employment at the Claridge was terminated. The Commission suspended his casino employee license on August 17, 1988. After losing the position with the Claridge, the respondent obtained a position as a heavy equipment operator with William Bowman and Associates, and he has now worked for this company for over two years. Thomas M. Maher, site development foreman for William Bowman and Associates, submitted a letter indicating that he considers the respondent to be a person of good character, honesty, and integrity and that the respondent is a good and valuable employee (R-4).

Prior to the 1987 incident, Mr. McConkey had been employed for four years by the Claridge and he was considered to be an outstanding employee. At the hearing

and by letter, one of his supervisors, Martin T. Williamson, a pit boss supervisor, stated that he has known the respondent for the entire time he worked at the Claridge. Mr. Williamson considers the respondent to be an excellent employee and a person of good character, honesty and integrity (R-1). In addition, his coworker at the Claridge, Emil P. Milec, testified that the respondent is an excellent dealer and that he considers him to be a person of good character, honesty and integrity. Mr. Milec stated that the respondent's fellow employees thought very highly of him and elected him to be a member of the committee which handles and divides the tips. Also at the hearing, Mary Ellen McCann testified that she is a family friend and that she has always found the respondent to be a reliable, honest and helpful friend. All three of these witnesses stated that initially the respondent had told them that his leased car had been stolen and it was not until after he was arrested that they became aware that he had falsified the report. However, all three witnesses stated that this incident did not change their opinion regarding the respondent's good character, honesty and integrity.

In addition, the respondent presented a number of letters attesting to his good character, honesty and integrity. By letter dated May 22, 1990, Roger P. Wagner, the president of Claridge, stated that Mr. McConkey was an excellent roulette dealer, and that notwithstanding the 1987 incident, he deserves to have the opportunity to again work in the casino industry (R-2). Joseph L. Ciano, the chief of staff of the Office of Superintendent of Elections and Commissioner of Registration of the County of Hudson, by a letter dated June 18, 1990, stated that he has known the respondent for his entire life, that he is aware of the 1987 incident and that the respondent should be given another chance (R-3).

On his own behalf, the respondent testified that he is a high school graduate and that he obtained his casino employee license in 1984. Mr. McConkey has qualified as a blackjack and roulette dealer and has received a license upgrade so that he qualifies for a floorperson position. Mr. McConkey would like to get another job in the casino industry. Except for the 1987 incident, Mr. McConkey has had no other arrests or convictions. Mr. McConkey was twenty-seven years old at the time of the 1987 incident. According to Mr. McConkey, this incident was a stupid mistake which has had a substantial effect on his life.

In closing, Deputy Attorney General Ralph L. Fusco argued that the Division has shown that the respondent filed false police and insurance reports and he argued that the filing of the false insurance report was analogous to theft by deception,

which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1). Mr. Fusco argued that the incident occurred less than three years ago and that an insufficient period of time has lapsed for the respondent to be able to show by clear and convincing evidence his rehabilitation. Additionally, Mr. Fusco argued that although there was only one criminal incident, the respondent reinforced the matter by lying and telling his family, friends and fellow employees that his car had been stolen. Lastly, Mr. Fusco questioned the respondent's candor and credibility since he was vague in his responses to Mr. Fusco's questions relating to how he got home from Kennedy Airport in New York City.

John C. Grady, Esq., on behalf of the respondent, argued that even though the 1987 incident was a serious offense, the respondent was relatively young at the time and his action was not a violent crime nor a crime which had a direct relationship to his casino job. Mr. Grady emphasized that the respondent was an outstanding employee of the Claridge and that the president of Claridge wrote a letter of endorsement on his behalf. Mr. Grady noted that Mr. McConkey has an unblemished employment record both in and outside of the casino industry. Further, Mr. Grady argued that the respondent received no financial gain from the 1987 incident since the insurance money was paid to the leasing company and all he received was the security payment of approximately $300.00. Mr. Grady admitted that the 1987 incident was a serious error in judgement; however, the respondent has successfully completed the PTI program. For all of these reasons, Mr. Grady argued that the respondent has shown his rehabilitation and that he is a person of good character, honesty and integrity.

CONCLUSIONS OF LAW

Based on the respondent's admissions during the hearing, I **CONCLUDE** that the Division has shown a violation of N.J.S.A. 2C:20-4, which is an automatic statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1).

Therefore the next issue in this matter is whether the respondent has shown rehabilitation. The Casino Control Act sets forth the following factors which the Commission shall take into consideration in order to determine whether a person has demonstrated rehabilitation:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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. [N.J.S.A. 5:12-90h]

In this matter, the respondent was a mature person at the time he committed the 1987 offense and he intentionally filed false police and insurance reports in order to get out of a car lease arrangement. At the hearing, the respondent could offer no explanation as to why he wanted to get out of the lease arrangement and why he did not negotiate the termination of the lease.

It is clear from the facts that this was a single foolish act by the respondent, and based on the testimony presented, it is clear that there is no reason to believe that there will be any repeat of such behavior in the future. Although this criminal offense occurred only approximately three years ago, Mr. McConkey has shown that he has an excellent employment record both in his former position with the Claridge and in his current position, and that he has successfully completed the PTI program. Based on all of the facts, I **CONCLUDE** that Mr. McConkey has shown by clear and convincing evidence that he is rehabilitated pursuant to the standards contained in N.J.S.A. 5:12-90h.

Also based on the same facts, I **CONCLUDE** that the respondent has shown that he is a person of good character, honesty and integrity as required for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

Therefore, I **ORDER** that the casino employee license of the respondent not be revoked.

827

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 10, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

9/10/90
DATE

Kim Wark
CASINO CONTROL COMMISSION

SEP 17 1990
DATE

Mailed to Parties:
Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

cad

828

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Supplemental Investigation Report of the Atlantic City Police Department, dated February 23, 1988

P-2 Supplemental Investigation Report of the Atlantic City Police Department, dated March 2, 1988

P-3 Supplemental Investigation Report of the Atlantic City Police Department, dated March 12, 1988

P-4 Indictment filed against Robert W. McConkey

For the Respondent:

R-1 Letter dated March 26, 1990, from Martin T. Williamson

R-2 Letter dated May 22, 1990, from Roger P. Wagner

R-3 Letter dated June 18, 1990, from Joseph L. Ciano

R-4 Letter dated June 22, 1990, from Thomas M. Maher

R-5 Order of Dismissal of the indictment filed against the respondent, dated February 13, 1990

R-6 Letter to the respondent from the Superior Court of New Jersey, dated March 2, 1990

R-7 Letter from Vincent Walker, dated March 30, 1990

R-8 Consent Order regarding respondent's participation in the PTI program

R-9 Enrollment of the respondent in the PTI program, with attachments

WITNESSES:

For the Petitioner:

None

For the Respondent:

Mary Ellen McCann
Martin T. Williamson
Emil Milec
Robert W. McConkey

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-176
LICENSE NO. 081572-21
REGISTRATION NO. 048459-40
OAL DOCKET NO. CCC 02845-90
ORDER NO. 90-37-13

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

Complainant,

v.

KIMBERLY A. McDERMOTT,

Respondent.

ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of Septebmer 19, 1990,

IT IS on this 20th day of September 1990, ORDERED that the initial decision is modified as follows:

(1) The Commission's decision in Division of Gaming Enforcement v. Donna Davis, 8 N.J.A.R. 301 (1985), requires consideration of the eight rehabilitation criteria prior to concluding whether or not an offense is "inimical" or disqualifying under section 86(c)(2). The ALJ's statement that "once an inimical violation has occurred, the respondent cannot then demonstrate rehabilitation" (init. dec. at p. 9) is rejected as incorrect;

(2) Pursuant to N.J.S.A. 2C:35-10(a)(1) possession of a controlled dangerous substance (cocaine) is a third degree crime. The ALJ's findings that the offense is a crime of the second degree and a disqualifier under N.J.S.A. 5:12-86(c)(1) are rejected as incorrect; it is neither;

(3) The ALJ's finding that the failure of the respondent to demonstrate her rehabilitation and good character, honesty and integrity precludes consideration of whether she is a candidate for waiver of her disqualification pursuant to N.J.S.A. 5:12-91(e) is rejected as incorrect. To the contrary, waiver of a disqualification which emanates from section 86(c) is an issue which only arises where the respondent fails to adduce clear and convincing proof of rehabilitation required for continued registration. Division of Gaming Enforcement v. Mark Phillip Crumble 12 N.J.A.R. 191 (1989). Here, the ALJ should have considered what interests of justice, if any, existed to waive disqualification. Considering the recent and serious offenses, which occurred on casino premises, the respondent's continued probation, and the virtual absence of any rehabilitative evidence, there are no interests of justice which warrant waiver of the respondent's disqualification, and

(4) The Commission's determination in this matter is based solely on the record developed at the OAL without consideration of the respondent's arrest on August 31, 1990, at the Taj Mahal.

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 02845-90
AGENCY DKT. NO. 90-176

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

Petitioner,

vs.

KIMBERLY A. McDERMOTT,

Respondent.

R. LANE STEBBINS, Deputy Attorney General for petitioner
(Robert J. DelTufo,Attorney General of New Jersey, attorney)

KIMBERLY A. McDERMOTT, respondent, pro se

Record Closed: JUNE 28, 1990 Decided: JULY 30, 1990

OAL DKT. NO. CCC-02845-90

BEFORE **JOSEPH E. KANE**, ALJ:

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) requesting the revocation of the casino employee license #81572-21 and casino employee registration #48459-40 issued to respondent. The Division alleges among other things that respondent committed acts which are inimical to the policies of the Casino Control Act and casino operations.

PROCEDURAL HISTORY

The Division filed its complaint with the Commission on November 29, 1989. Respondent requested a hearing on March 13, 1990 and on April 2, 1990 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on June 13, 1990 by Jeff S. Masin, ALJ followed by a hearing which was held on June 28, 1990. The record was closed on June 28, 1990.

ISSUES

The issues to be determined by this tribunal are as follows:

A. Would Ms. McDermott's continued licensure and/or registration be inimical (against) the interests of the casino industry and the policies of the Casino Control Act?

B. Does Ms. McDermott have the required good character, honesty and integrity for licensure as a casino employee, as required by N.J.S.A. 5:12-90(b), incorporating 89b(2)?

C. With respect to the registration, if Ms. McDermott would otherwise be disqualified from holding a registration, do the facts and circumstances of this case indicate that the Casino Control Commission should waive (not require) a revocation in the interests of justice and under the policies of the Act?

UNCONTESTED FACTS

Based upon testimony and documents proffered at the hearing, the following facts are neither contested nor in dispute. Therefore, these uncontested facts are hereby adopted as **FINDINGS OF FACT** in this matter.

Respondent, Kimberly A. McDermott is a 25 year old single female with no dependents, who was issued a casino employee license and casino hotel employee registration. She had been employed by Trump Castle Hotel/Casino in the capacity of pit clerk for three years prior to September 7, 1989. In this function, respondent compiles data concerning players within her pit the purpose of which is to determine which players are

eligible for comps. On that date, respondent was arrested and charged with N.J.S.A. 2C:20-3 (theft) and N.J.S.A. 2C:35-10(a)1 (possession of a controlled dangerous substance (cocaine)).

The State presented the testimony of Det. Joseph Eden, a member of the New Jersey State Police for twelve years, of which the last six years have been with the Division of Gaming Enforcement. Det. Eden's description of the events which occurred on September 7, 1989 were based upon his personal investigation of the matter including having viewed video tapes obtained from Trump Castle Security. Det. Eden was advised by the security supervisor at Trump Castle that respondent had been observed removing money from other employees purses which were placed adjacent to respondent's work area. Respondent on September 7, 1989 was a pit clerk in Pit #1 of the baccarat area. The pit stand in which she was observed, is slightly elevated from the casino floor and is located a short distance from the baccarat tables. The employees working in Pit #1 were permitted to leave their purses in and about respondent's pit stand. Respondent was observed removing money from her fellow employees purses at 8:25 p.m., 8:29 p.m. and 8:32 p.m. After observing the respondent, both on tape and during a filming of the incident as it was occurring, Det. Eden approached respondent, identified himself and requested that she accompany him to the DGE office. Consenting, respondent accompanied Det. Eden to the office where she was read her miranda rights and placed under arrest for the alleged theft. In response to questioning, the respondent admitted taking $15.00 from a purse. During the course of a

patdown frisk conducted by a female officer, respondent voluntarily removed $36.00 from her pantyhose. Questioning of employees working in Pit #1 revealed that floorperson Mi Suk Riley was missing $36.00 from her purse. This money was in denominations of one $20.00 bill, one $5.00 bill and eleven $1.00 bills which corresponded exactly in amount and denomination to that which was removed from the respondent's pantyhose. Blackjack dealer Lynn Carusi stated she was missing $10.00 from her purse. A subsequent search of respondent's purse revealed a crumpled $10.00 bill. As a result of this incident, respondent was charged with theft by unlawful taking, N.J.S.A. 2C:20-3. During the subsequent search of respondent's purse, Det. Eden discovered a black Trump Castle matchbook containing a plastic envelope containing what was later identified by the SBI laboratory in Hammonton, New Jersey as .22 grams of cocaine. Respondent had voluntarily informed Det. Eden at the time of the arrest that the substance in the matchbook was cocaine. She was then charged with possession of a controlled dangerous substance, N.J.S.A. 2C:35-10(a)1.

Respondent pled guilty in the Atlantic City Municipal Court to one count of possession of a controlled dangerous substance, N.J.S.A. 2C:35-10(a)1 and was sentenced to 90 days to be served in the Atlantic County Justice Facility, two years probation and a $1,000.00 penalty. Respondent served 61 days of her jail term commencing on February 16, 1990. As of the date of the hearing, respondent was scheduled to see her probation officer for the second time and had not yet paid any of the

$1,000.00 penalty. Respondent, with great regret for her actions, attributes her behaviour to her then addiction to drugs. Since November of 1989 and while incarcerated, she has attended Narcotics Anonymous meetings and has been drug free from November to the date of the hearing. She claims that NA has worked for her and managed to keep her off of drugs. Respondent has had a fight with addiction and spent time in a rehabilitation facility in 1986. This experience kept her free of drugs for eleven months until she rejoined her old friends. She now knows through NA that she cannot associate with old friends who are involved with drugs. Respondent is well aware of how drugs have ruined her life.

Respondent did not produce any evidence in support of her good character, honesty and integrity other than her own testimony. The undersigned offered to hold the record open to enable her to produce such evidence, however, despite encouragement by the Deputy Attorney General, respondent refused on the grounds that she had caused her family enough trouble in the past and she "just wanted to get it over with".

DISCUSSION AND CONCLUSIONS

Pursuant to N.J.S.A. 5:12-1b(8), it is established 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 sanctions against the license held by a person "for the commission of any other offense or violation of

this Act which would disqualify such person from holding their license."

Two of the issues set forth herein (Issues B and C) are whether respondent has been convicted of possession of a controlled dangerous substance (cocaine), N.J.S.A. 2C:35-10(a)1 and theft, N.J.S.A. 2C:20-3. Both the State's proofs and the respondent's admission lead to the conclusion that respondent did violate the criminal code of the State of New Jersey in that she possessed a controlled dangerous substance (cocaine) in violation of N.J.S.A. 2C:35-10(a)1 and that she was guilty of theft, N.J.S.A. 2C:20-3 by reason of the money that was stolen from her fellow employee's purses. The question which now must be addressed is whether under all the circumstances above, respondent's conduct is inimical to the policies of the Casino Control Act and the gaming industry in general.

The criteria to be utilized in determining whether a particular conduct is inimical was set forth in the case of Davis vs. Division of Gaming Enforcement, 8 N.J.A.R. 301:

> "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". Davis at page 313.

In determining whether respondent's conduct is inimical to the Act and the gaming industry, the analysis need go no further than to examine into the type of the crime and most importantly, its location. Respondent's position is one which places her in full and constant view of the public. Visible to casino security, and one can only assume also in view of the public, respondent systematically removed monies from her fellow employee's purses. Confidence in the gaming industry would most certainly be undermined in the eyes of the public to view a representative of Trump Castle Hotel/Casino engaging in theft. Addiction to narcotics by respondent's own admission may have lead to her unfortunate behaviour, however, given the nature and duties of her position, that of calculating comps for patrons, her conduct in the midst of such patrons is simply inexcusable.

Respondent's conviction for possession of a controlled dangerous substance, N.J.S.A. 2C:35-10(a)1 must also be considered inimical conduct. In this instance, the possession of

the drug did not occur off the casino premises, but instead, at a crucial location where a vital casino marketing function was being performed. In addition, the nature of the crime, possession of a controlled dangerous substance constitutes a crime of the second degree pursuant to N.J.S.A. 2C:35-10(a)1. Accordingly, not only does the conduct fall within the inimical classification but also a violation of N.J.S.A. 5:12-86c(1) thus disqualifying respondent from retaining her casino hotel employee registration #48459-40.

Pursuant to Davis supra, once an inimical violation has occurred, the respondent cannot then demonstrate rehabilitation. However, the rehabilitation factors set forth in section 90(h) can be utilized in determining whether the conduct is inimical in the first instance. Factor number 4 is of particular note since the date of respondent's arrest was September 7, 1989. As of the date of the hearing, respondent had only been out of jail for approximately three and one-half months. Much to her credit, she has been drug free due to her regular attendance at NA meetings. Her efforts towards abstinance from illegal drugs is highly commendable, however, there is simply not enough time between the happening of the event and the date of the hearing to demonstrate that such activities would not occur again on the casino floor. This is also consideration when analyzing whether respondent has demonstrated by clear and convincing evidence her rehabilitation in order to maintain her hotel registration. Her significant efforts towards rehabilitation, if continued, should at some time in the future demonstrate her rehabilitation sufficient to restore her hotel registration.

Respondent while employed by Trump Castle Hotel/Casino committed acts of theft in violation of N.J.S.A. 2C:20-3 and possession of CDS (cocaine) in violation of N.J.S.A. 2C:35-10(a)1. Because these acts were committed on the casino floor at Trump Castle Hotel/Casino, **I FIND** that respondent's continuing licensure would be inimical to the policies of the Casino Control Act and the gaming industry. I, therefore, **REVOKE** respondent's casino employee license #81572-21. **I FURTHER CONCLUDE** that the commission of a crime of the second degree here, possession of cocaine N.J.S.A. 2C:35-10(a)1, constitutes a statutory disqualifier pursuant to section 86c(1) of the Act and accordingly, I hereby **REVOKE** respondent's hotel employee registration #48459-40. **I FURTHER FIND** that respondent has failed to demonstrate by clear and convincing evidence her good character, honesty and integrity and **I FURTHER FIND** that she has failed to affirmatively demonstrate her rehabilitation so as to overcome the disqualifying provisions of section 86c(1) of the Act. Considering the above, it is unnecessary to consider whether respondent should be afforded the extraordinary relief of waiver pursuant to section 91(e) of the Act. **IT IS SO ORDERED.**

This recommended decision may be adopted, 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.

OAL DKT. NO. CCC-02845-90

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

July 31 1990
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

8/1/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 0 8 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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WITNESSES

FOR PETITIONER:

Detective Joseph Eden, Division of Gaming Enforcement

FOR RESPONDENT:

Kimberly A. McDermott

EXHIBITS

FOR PETITIONER:

P-1 New Jersey State Police Investigative Report dated 9/7/89

P-2 Summons & Complaint #S773658 dated 9/7/89

P-3 Summons & Complaint #S773657 dated 9/7/89

P-4 Atlantic County Indictment for Possession of CDS

FOR RESPONDENT:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-80
LICENSE NO. 010148-21
APPLICATION NO. 004448-11
OAL DOCKET NO. CCC 07629-89
ORDER NO. 90-38-10

APPLICATION OF MARK McDUFFIE
FOR A CASINO KEY EMPLOYEE LICENSE

ORDER

A hearing 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 Division having withdrawn its objection to the application of Mark McDuffie for a casino key employee license; and the Commission having considered the entire record of these proceedings at its public meeting of September 26, 1990,

IT IS on this 17th day of October 1990, ORDERED that the initial decision is modified as follows:

(1) to note that because the Division did not file a complaint for revocation of the applicant's casino employee license, there was no complaint for the administrative law judge to dismiss; and

(2) to include the Division's post-hearing letter of July 5, 1990, withdrawing its objection to the casino key employee license application, as Exhibit R-11.

IT IS FURTHER ORDERED that the application of Mark McDuffie for a casino key employee license is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7629-89
AGENCY DKT. NO. 90-EA-80

**IN THE MATTER
OF THE APPLICATION
OF MARK McDUFFIE
FOR A CASINO KEY
EMPLOYEE LICENSE,**

Mark McDuffie, petitioner, pro se
Nancy P. Scharff, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: July 17, 1990 Decided: August 21, 1990

BEFORE **EDGAR R. HOLMES**:

The petitioner is presently licensed as a blackjack floorperson, a roulette dealer and a baccarat dealer. He applied for a casino key employee license in order to perform in the sensitive position of pit boss. On August 3, 1989, the Division of Gaming Enforcement (Division) wrote a letter to the Casino Control Commission (Commission) objecting to the petitioner's application on the grounds that he had committed conduct which is equivalent to theft in the third degree (over $500), and on the additional grounds that he lacked the good character, honesty and integrity for casino key employee licensure.

The petitioner is alleged to have received unemployment benefits to which he was not entitled in excess of $500. This act, while never prosecuted criminally, may still be considered as a disqualification from casino key employee licensure pursuant to N.J.S.A. 5:12-86c1, g, and 89d. The conduct may also be asserted against an

applicant's claim that s/he possesses the good character, honesty and integrity for casino key employee licensure. N.J.S.A. 5:12-89b(2).

A telephone prehearing conference was held on February 27, 1990 and, among other things, the issues referred to above were identified for resolution at a plenary hearing. The plenary hearing convened on June 6, 1990. The record remained open until July 17, 1990 in order for the State to submit briefs and additional evidence.

At the plenary hearing, the Division proved and the petitioner admitted that a certificate of debt in the amount of $612 was entered against the petitioner by the Division of Unemployment and Disability Insurance of the Department of Labor on December 20, 1983. The judgment represents unemployment benefits which were overpaid to the petitioner in November and December of 1981 and a fine.

The petitioner was employed at the Tropicana Hotel/Casino at the time. The Casino had just opened for business and the petitioner was coming off of a period of unemployment. He did not report his employment immediately. He used the extra money to pay off some bills acquired during his period of unemployment. He did notify the Division of Unemployment after approximately four weeks however when he began to receive income from tips and no longer needed the benefits to tide him over. These are the operative facts concerning the alleged theft.

At the conclusion of the plenary hearing, the Division of Gaming Enforcement reexamined the petitioner's claim in light of the fact that he may have been entitled to partial benefits during the period of the claim. The Division determined that the actual amount of benefits paid to the petitioner over and above the amounts to which he was entitled totaled $325.00 Since this does not rise to the level of a third degree theft, the Division advises that the petitioner is not disqualified from casino key employee licensure. Under the New Jersey Criminal Code, the value of the goods stolen must exceed $500 to be considered a crime of the third degree. N.J.S.A. 2C:20-2b(2).

The Division also points out in its post hearing letter that the petitioner's proofs at the hearing sufficiently establish his good character, honesty and integrity.

It cites his good work record and the length of elapsed time since the events occurred. I agree with the Division's recommendations.

The petitioner has paid the obligation against him and a warrant of satisfaction has been entered. He expressed his personal embarrassment at his situation. The petitioner has a good work history, having been formerly employed as an architectural draftsman. He has been employed in the casino industry since its inception. His recommendations and evaluations from supervisors and coworkers are outstanding. It is obvious from his work record that he will continue to advance in the casino industry and has the capabilities to become an industry executive. But for this incident of very short duration, the petitioner has no other blemish on an otherwise fine record.

Based on the Division's post hearing submission and the evidence adduced at the hearing, I **CONCLUDE** that the petitioner has not committed an offense which would disqualify him from casino employee licensure pursuant to N.J.S.A. 5:12-86c1,g and 89d.

I further **CONCLUDE** that the petitioner has affirmatively demonstrated by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for casino key employee licensure pursuant to N.J.S.A. 5:12-89b(2).

ORDER

Accordingly, it is hereby **ORDERED** that the complaint filed by the Division of Gaming Enforcement be and is hereby **DISMISSED** and that the petitioner's application for a casino key employee license be **GRANTED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

DATE

EDGAR R. HOLMES, ALJ

8/22/90

DATE

Receipt Acknowledged:

CASINO CONTROL COMMISSION

AUG 24 1990

DATE

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

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WITNESS LIST

For the Petitioner:

Mark McDuffie

For the Respondent:

Rita Kazmierski
Adeline V. Marshall
Mark McDuffie

EXHIBIT LIST

For the Petitioner:

P-1 Warrant for Satisfaction
P-2 Copy of State v. Dunston decision from the N.J. Law Journal
P-3 Letter of Recommendation from Wanda Ashley
P-4 Letter of Recommendation, May 21, 1990, from Carl R. Bell, Jr.
P-5 Letter of Recommendation, May 18, 1990, from Vivian Green
P-6 Letter of Recommendation, May 10, 1990, from Robert L. McDuffie, Acting Chief of Police, City of Atlantic City
P-7 Letter of Recommendation, May 21, 1990, from Victoria E. Sacco

For the Respondent:

R-1 Certificate of Debt
R-2 Determination and Demand for Refund
R-3 Claimant's Benefit Payment and Employment Record
R-4 Notice of Hearing
R-5 Record of Hearing
R-6 Claimant Ledger
R-7 Claimant Inquiry
R-8 Memo, March 9, 1990, to Agent Rita Kazmierski, from Walter Reilly, Department of Labor
R-9 Pamphlet, entitled "Your Rights and Responsibilities"
R-10 Copy of Blank Unemployment Check

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-335
LICENSE NO. 051490-22
REGISTRATION NO. 041504-40
OAL DOCKET NO. CCC 01728-90
ORDER NO. 90-44-10

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
BETHANNE McFADDEN

ORDER

A hearing 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 November 7, 1990,

IT IS on this 8th day of November 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, VICE-CHAIR

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1728-89
AGENCY DKT. NO. 89-EA-335

IN THE MATTER OF
THE RENEWAL APPLICATION
OF BETHANNE MCFADDEN
FOR A CASINO EMPLOYEE LICENSE.

Laura McAlister, Esq., for petitioner (Cooper, Perskie, April, Niedelman, Wagenheim, & Levenson, attorneys)
Joanne Ciancimino, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: August 23, 1990 Decided: September 21, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

Bethanne McFadden, petitioner, graduated from Seton Hall University on May 21, 1983 with a Bachelor of Arts degree. She returned to the University in the fall of 1983, and in the spring of 1984, to take graduate business courses, but did not stay for an advanced degree. During the summers while she was a college student, petitioner was employed as a cocktail waitress at Atlantic City casinos and, during the school year, she collected unemployment compensation.

Sometimes during the school year, the petitioner would be called back to Atlantic City to work a special event, such as a prize fight or convention. On these occasions, she would drive down from the University and work the event. On two occasions, from December 1982 to April 1983, and from January 1984 to May 1984, while petitioner was collecting unemployment benefits, she did not report her earnings from Harrah's Marina Hotel and Casino to the Division of Unemployment

Benefits. On the first occasion, petitioner received $553.00 of unemployment benefits to which she was not entitled. On the second occasion, petitioner received $668.75 of undeserved unemployment benefits.

The petitioner stipulated to these facts and concedes that her conduct can be equated with theft in the third degree, contrary to N.J.S.A. 2C:20-4 and 2.

As a result of this conduct, the Division of Gaming Enforcement (Division) objected to the petitioner's application for a renewal of her casino employee license. It filed its objection with the Casino Control Commission (Commission) which issues licenses. A license permits an employee to perform duties on the casino floor or in connection with casino gaming. The petitioner requested a hearing and the Commission transmitted the matter to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 5:12-107.

The following issues were listed at a prehearing conference for resolution at a plenary hearing:

1. Has the petitioner committed acts which constitute the offense of theft by deception in the third degree, contrary to N.J.S.A. 2C:20-4, which would be a disqualifier from licensure pursuant to sections 86c(1) and 90e of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the Act.

2. If the petitioner has committed acts which constitute an otherwise disqualifying offense pursuant to section 86c(1) of the Act, has she affirmatively established her rehabilitation by clear and convincing evidence, pursuant to section 90h of the Act.

3.. Has the petitioner established by clear and convincing evidence that she possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act.

The Casino Control Act (Act) strictly regulates persons who are licensed to work upon the casino floor. At section 86c (1), there is a list of crimes. N.J.S.A. 2C:20-

4, theft by deception, if it is in the third degree (over $500), is on the list. Anyone who commits such an offense, whether or not they are prosecuted for the offense, is disqualified from casino employee licensure. N.J.S.A. 5:12-86g and 90e.

As a result of petitioner's stipulation, I **CONCLUDE** that the petitioner is disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86c(1), and 90e unless she can save her license by affirmatively demonstrating that she is rehabilitated pursuant to N.J.S.A. 5:12-90h.

The petitioner, who is 29 years old, committed these infractions when she was 22 or 23 years old and a college student. It is the only blemish on an otherwise productive life. She is now an administrative assistant in the marketing department of Trump Plaza Hotel and Casino. She has been in a management training program for more than seven months. The president of Trump Plaza Hotel and Casino predicts that she will go far in the company. She has letters of recommendation which attest to her good character, honesty and integrity, not only from the president of the Trump Plaza Hotel and Casino, but from its vice president of food and beverage operations as well. Her direct supervisor, the vice president for casino marketing, and a friend and co-worker, both testified personally on her behalf. There is no question that her employer and co-workers are convinced that she is rehabilitated and has good character, honesty and integrity.

In addition, the petitioner has other interests than her career. She has been involved for the past four years in a fund raising organization known as the "Friends." The Friends contributed last year to the Marine Mammal Society. This year it will donate to the Dooley House, a home for babies with AIDS.

An applicant faced with the existence of one or more section 86c(1) disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating her rehabilitation as provided by section 90h of the Act. The factors which the Commission shall consider in determining the applicants rehabilitation are as follows: (1) The nature and duties of the position applied for; (2) The nature and seriousness of the offense or conduct; (3) The circumstances under which the offense or conduct occurred; (4) The date of the offense or conduct; (5) The age of the applicant when the offense or conduct was committed; (6) Whether the offense or conduct was an isolated or repeated

incident; (7) Any social conditions which may have contributed to the offense or conduct; (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.

(1) The petitioner has applied for a renewal license which will permit her to continue working on the casino floor.

(2) The offense was not serious. She was not prosecuted for its commission. It was not a crime of violence. No person was injured by her actions. Unemployment benefit theft is one of the milder forms of white collar crime. In this case it is a third degree crime and carries a presumption with it that a first offender will not be incarcerated. N.J.S.A. 2C:44-1e. There is no question however, that it is a factor to be considered in licensing a person to handle cash or other similar items because it raises the question of honesty.

(3) The offense occurred when the petitioner was a student.

(4) (5) The offense occurred in two periods. One period covered part of 1982 and 1983. A second period covered part of 1983 and 1984. The petitioner was 22 or 23 years old.

(6) The offense has never been repeated. The petitioner has committed no other offenses.

(7) There was no evidence offered at the hearing that social conditions contributed to the offense.

(8) The petitioner is fully employed. She is in training for an executive position in the casino industry. She is highly regarded by both her supervisors and her peers. She has a social conscience and engages in charitable work. She has repaid the debt and is in all respects fully rehabilitated.

I **CONCLUDE** that the petitioner has affirmatively demonstrated her rehabilitation pursuant to N.J.S.A. 5:12-90h.

I further **CONCLUDE**, based on the identical factors, that the petitioner possesses the good character, honesty and integrity required for casino employee licensure by N.J.S.A. 5:12-89b(2) and 90b.

I **ORDER** that the objection letter filed by the Division be **DISMISSED**.

I further **ORDER** that the petitioner's casino employee license be **RENEWED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 21 1990
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

9/24/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 26 1990
DATE

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Lori Taylor
Tina Steinfals
Deborah Cesen
Bethanne McFadden

For the Respondent:

None

EXHIBIT LIST

For the Petitioner:

P-1 Transcript Seton Hall University
P-2 Personal Check #494 $100
P-3 Personal Check #500 $100
P-4 Personal Check #523 $200
P-5 Personal Check #549 $933.50
P-6 2 page Warrant for Satisfaction
P-7 Notice of Satisfaction, June 12, 1989
P-8 Certification of Jack O'Donnel
P-9 Certification of Urs Neuche

For the Respondent:

R-1 Determination and Demand for $668.75
R-2 Schedule of Overpayments $668.75
R-3 Determination and Demand for $553.00
R-4 Schedule
R-5 Printout (4 pages)
R-6 Record of Hearing 1984
R-7 Printout, July 6, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-EA-21
LICENSE NO. 000147-11
OAL DOCKET NO. CCC 04089-89
ORDER NO. 90-35-8

APPLICATION FOR RENEWAL OF THE CASINO KEY EMPLOYEE LICENSE OF LAWRENCE L. McGUIRE

ORDER

A hearing 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 September 5, 1990,

IT IS on this 14th day of September 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly 9.21.
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4089-89
AGENCY DKT. NO. 84-EA-21

LAWRENCE L. MCGUIRE,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Paul J. Gallagher, Esq., for petitioner (Megargee, Youngblood, Franklin & Corcoran, attorneys)
Ralph L. Fusco, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: May 24, 1990 Decided: July 16, 1990

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, filed a letter with the Casino Control Commission (Commission), dated April 18, 1989, wherein the Division objected to the renewal of a casino employee license issued to petitioner. The Division's 1989 objection to the renewal of petitioner's key license was based upon its letter, dated January 9, 1984, to the Commission where it

alleged, among other things, that petitioner deducted certain promotional and entertaining expenses from his 1981 individual income tax return with the Internal Revenue Service (IRS), to which he was not entitled. Petitioner contends that his expenses were legitimate, however, he filed an amended tax return with the IRS in 1984, at the insistence of the Division, to avoid any difficulties with his license renewal.

On June 5, 1989, the matter was transmitted to the Office of Administrative Law (OAL) 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 5, 1989 at which, among other things, the issues to be determined by this tribunal were set forth and the hearing dates of December 21 and 22, 1989 were established. The hearing was held on December 21, 1989, February 17, 1990 and April 17, 1990. The record remained open to provide the Deputy Attorney General time to review certain documents concerning bankruptcy proceedings concerning petitioner. The record closed on May 24, 1990. A request for an extension of time in which to file this initial decision has been granted.

ISSUES

The issues to be determined in this matter, as agreed upon by the parties at the prehearing conference, are these:

A. Whether petitioner's improper deductions on his 1981 Federal Income Tax Return are analogous to a theft offense under N.J.S.A. 2C:20-3 and, therefore, is a disqualifying offense pursuant to Section 86c (1) of the Casino Control Act (Act), despite the fact that the conduct was not prosecuted under the criminal laws of this State, as permitted by N.J.S.A. 5:12-86g?

B. Whether petitioner's improper deductions on his Federal Income Tax Return negatively affects his good character, honesty and integrity as required by Section 89b (2) of the Act and, whether his violation of the credit regulations negatively impacts on his good character, honesty and integrity?

BURDEN OF PROOF

1. The Division has the burden of proof, by a preponderance of the credible evidence, as to issue A.

2. Petitioner has the burden of proof as to issue B, by the standard of clear and convincing evidence.

UNCONTESTED FACTS

Based upon the testimony adduced at the hearing and the documents entered into evidence, the following facts are neither contested nor in dispute. I, therefore, adopt the following as my **FINDINGS OF FACT** in this matter:

Petitioner is presently 45 years of age and has been licensed by the Commission since May 1, 1979 as a pit boss (all games) and a shift manager. From October 1980 through November 1982, petitioner was employed by the Golden Nugget Hotel and Casino in Atlantic City, New Jersey as a pit boss. His duties included, among other things, the supervision of personnel and the management of running the games assigned to him. As a pit boss, petitioner had direct contact with patrons who played at the gaming tables. Petitioner was never directed by his supervisors to engage in promotional work for the casino. However, he entertained certain patrons on the casino premises by dining with the patrons or attending a function at the casino hotel with them. He would provide patrons with other complimentary (comps) services or items when authorized to do so. On other occasions, petitioner was sent by the Golden Nugget to attend openings, charity events and/or golf outings with patrons.

In or about August 1982, petitioner and his wife filed a joint United States Individual Income Tax Return for the year ending December 31, 1981. Therein, petitioner declared $8,760 as "Expenses incurred as employee of the Golden Nugget Hotel and Casino, Atlantic City, N.J." (R-1). Petitioner claimed, among other things, expenses for 13 trips to New York (City) and two trips to Washington (D.C.) for "promotion and entertaining casino players." (R-1). Petitioner did not seek permission from his supervisors nor was he authorized by the Golden Nugget to take

the 13 trips to New York or the two trips to Washington to entertain casino patrons. In fact, petitioner took the trips on his days off from his employment duties at the Golden Nugget. Petitioner contended that he engaged in the entertainment of Golden Nugget patrons to encourage them to gamble at the casino and to enhance his image with his supervisors.

Petitioner claimed $6,500 in expenses for the 13 trips to New York and $1,000 for the two trips to Washington on his tax return. Petitioner had no diary or calendar which would indicate the date, time, place, type of entertainment (dinner, shows) and/or individuals entertained by him for any of the 15 trips. Nor did petitioner produce any receipts or other documentation demonstrating expenses incurred by him for any of the 15 trips. Petitioner's wife accompanied petitioner to New York on six of the 13 trips. He did not deduct his wife's estimated expenses of food, lodging and transportation for the six New York trips on his 1981 tax return.

Petitioner listed auto and promotional expenses in connection with 12 golf trips for casino players on his 1981 tax return. He placed the expenses as $75 per trip, for a total of $900 for this tax deduction. He had no diary or calendar to indicate when or where these trips were made. Nor did he have any documentation by way of receipts or vouchers to support the expenditures.

In calculating the expenses for each of the 13 trips to New York and the two trips to Washington, D.C., petitioner estimated the cost for a typical trip and then used the median amount to arrive at the total amount of $6,500 to deduct from his 1981 income tax for the New York trips and $1,000 for the Washington trips. Rick Freizer, a Certified Public Accountant (CPA), prepared petitioner's 1981 Federal income Tax Return. By way of affidavit, Mr. Freizer asserted that the dollar figures reflected on Line 23 - Employee Business Expenses, were provided to him by petitioner. Freizer asserted that he would not have permitted petitioner to deduct these expenses "...if there had not been receipts or other documentation or a representation from the client that these expenses actually had been incurred." (R-2). Freizer continued to assert that he would not have permitted petitioner to deduct those expenses if petitioner was not authorized to make the trips or if the trips were not an integral part of his employment.

Petitioner traveled to New York between 20 and 25 times in 1981. Some of the trips were completely personal while others were strictly business. Other trips taken by petitioner were a combination of personal and business. In 1981, petitioner took between 20 and 25 trips to Washington, D.C. where certain of his family members reside. On all but two of his 1981 trips to Washington, petitioner stayed with family members. On two trips to Washington, petitioner stayed in hotels in the city of Washington, D.C.

Petitioner subsequently filed an amended 1981 tax return prepared by Michael Taxin, CPA, on or about June 25, 1984. As a consequence of his filing an amended 1981 tax return, petitioner paid $4,397.00 to the IRS despite the fact that the IRS never sought an audit of petitioner's 1981 tax return. Petitioner was neither assessed any fines or penalties by the IRS for his 1981 or 1984 amended tax returns. Under Part II, Form 4726, Explanation of Changes to income, Deductions and Credits, petitioner stated, in part:

> To Amend Return Pursuant to a Demand Made by the New Jersey Division of Gaming Enforcement as a Condition of Being Licensed to Work in a New Jersey Casino. (P-1).

TESTIMONIAL EVIDENCE AND CONTESTED FACTS

Robert W. Latimer, an administrator of investigation for the Division; i.e., supervisor of the Financial Analysis Section, was qualified as an expert in the field of taxation with respect to the preparation and review of income tax returns and testified on behalf of the Division. He reviewed petitioner's 1981 tax return with particular attention to petitioner's employee business expenses. He asserted that petitioner's business expenses were permissible deductions under the IRS Code where the deductions met the following tests: (1) The expense must be directly related to business; (2) That the employer or employee will receive some income (benefit) from the expense; (3) The expenditure must be in a business setting; (4) There must be substantiation for the expense either by way of receipts, a business log, journal or other supporting evidence, and; (5) The expense must be ordinary and necessary for the business. He asserted that ordinary can be a one time expense and it was not necessary for the employee to have the employer's approval in order for the employee's expenses to be justified as income tax deductions under

necessary. There would have to be, however, some hope or belief that there would be a monetary or income benefit to the employer or employee.

Mr. Latimer opined that petitioner's business expenses would not be permissible, given the facts in this matter; i.e., petitioner's failure to produce any documentation or receipts for the expenses listed and the absence of a diary which would indicate the type of trips and its business relationship. Latimer contended that the majority of cases under his review concerning casino key employees and qualifiers, involved expenses limited to junkets. He further opined that petitioner's wife's expenses would not be permitted as deductible expenses unless it could be shown that her expenses were directly related to the business activity. He qualified his opinion by stating that if it could be shown that petitioner's wife's mere presence led to the business or petitioner being benefited with future income, then the wife's expenses would qualify as permissible deductions for income tax purposes. Mr. Latimer asserted that as a consequence of petitioner's declaring the business expenses on his 1981 Federal Income Tax Return, petitioner moved from the 54 percent tax bracket to the 49 percent tax bracket with a savings of approximately $4,400 in tax liability.

On cross-examination Latimer opined, among other things, that it was the duty of the accountant preparing a tax return to do so for the benefit of the client in order that the client pays the least possible tax. The accountant will typically ask the client taxpayer to substantiate any deduction, however, the tax preparer does not necessarily review the substantiation. In the event the tax payer cannot substantiate a deduction, the accountant then has the duty to advise the taxpayer that the deduction will not be allowed by the IRS. Latimer asserted that it was permissible in 1981, to estimate deductions. He asserted that the rules for substantiation of deductions had changed, considerably, since 1981.

Latimer testified that the effect of a taxpayer in amending a return was to clarify, correct or adjust the original tax return based upon new information. He asserted that an amended tax return supersedes the original tax return and that petitioner's claimed deductions on the original return were wiped out by the amended return. He stated that petitioner's amended 1981 tax return eliminated the $8,760 deduction for business expenses, with an adjustment of $4,397 in additional taxes owed by petitioner to the IRS.

At the close of the Division's case in chief, counsel for petitioner made an oral application to dismiss the Division's charges and allegations against his client for lack of proof. Having heard oral argument on the motion, the undersigned held the motion in abeyance based upon the Division having made a prima facie case with respect to its charges. Petitioner was, therefore, required to move forward with his proofs.

Michael Steven Taxin, testified on behalf of petitioner. Mr. Taxin is a self-employed licensed New Jersey public accountant who does accounting, audits, tax preparations and represents his clients before the IRS when called to do so. He was formerly employed by the IRS as a tax examiner and audit classifier. He generally prepares between 200 and 300 tax returns for filing with the IRS during each tax season. He estimates that he has prepared thousands of tax returns during the course of his career. As a consequence of his background and representations to this tribunal, Mr. Taxin was qualified as an expert in the area of tax preparation and in the review of tax returns.

Mr. Taxin testified that he prepared petitioner's amended 1981 tax return on June 24, 1984, through petitioner's then attorney, Richard Press. He asserted that there was an arrangement between the Division and Mr. Press that upon the completion and filing of the amended tax return, petitioner then would be relicensed as a casino key employee. Specifically, Taxin eliminated the employee business expenses deductions (line 23 of Form 1040) (R-1) which Press stated were objectionable to the Division.

Taxin, who is familiar with the IRS rules as of 1981 and the subsequent changes made pursuant to the Tax Reform Act of 1984, testified that under the old tax law substantiation of deductions was required. However, in the absence of written documentation in an IRS audit, verbal (oral) documentation was completely acceptable when no other forms of documentation were available. He asserted that IRS auditors were instructed to accept oral documentation unless the taxpayers could otherwise substantiate the proffered tax deduction. He opined that it was reasonable and acceptable for a taxpayer to orally claim a $500 average expense for

a trip to New York in the absence of any contrary evidence. He stated that the IRS audit manual contained reference charts which relate to normal and reasonable expenditures. In circumstances of an IRS audit, the amount of the deduction would be viewed against the total income of the taxpayer.

Mr. Taxin testified that the effect of filing an amended tax return to eliminate Line 23, Form 1040 deductions was to eliminate the deductions as though the deductions never existed. In any future IRS audits, petitioner's amended tax form, 1040X, would be the only one considered and any deductions taken on his original 1981 1040 Form would no longer be considered because said deductions were eliminated and are no longer a part of the tax return.

Mr. Taxin asserted that to his knowledge, the IRS never requested an audit of petitioner's original 1981 tax return nor of the 1984 amended 1981 tax return. He testified that under the present tax law, the taxpayer is required to maintain a diary and keep explicit documentation to substantiate employee business expenses.

On cross-examination, Taxin testified that section 274d of the 1976 amendments to the Internal Revenue Code required substantiation with regard to travel expenses. He also asserted that oral substantiation of a taxpayers deduction was provided in the Code under the clause which states "...or by sufficient evidence corroborating his own statements." The taxpayer was not required to corroborate a deduction through a receipt, canceled check or credit card receipt under the IRS auditor's guidelines.

Mr. Taxin testified as to his procedures in preparing an individual tax return with regard to travel and business expenses. He asserted that he would not necessarily review written documentation related to the expenses if the taxpayer did not provide it to him. Rather, Taxin would require the taxpayer to sign a statement attesting to the fact that such documentation exists. Taxin would not prepare the tax return including the deductions if the taxpayer refused to sign the statement in the absence of providing documentation for business expense deductions.

Richard Press, a licensed attorney at law in the State of New Jersey, testified, among other things, that he was petitioner's legal counsel in 1980 and represented petitioner with regard to the Division's letter to the Commission dated January 9,

1984, objecting to the renewal of petitioner's casino key employee license. Attorney Press could not recall whether he was first contacted by officials of the Tropicana Hotel and Casino or by petitioner. In any event, he represented petitioner with regard to the Division's objection to the renewal of petitioner's license.

Mr. Press began his representation of petitioner by requesting discovery from the Division which included, among other things, a transcript of a sworn statement given to the Division's investigators by petitioner. The attorney researched what rights, if any, the Commission possessed to request petitioner to subject himself to an IRS audit, to request that he amend his tax return, or alternatively, to disqualify petitioner from further licensure as a result of what the Division and Commission perceived to be improper filing of tax returns and, specifically, improper deductions taken by petitioner. He contacted tax experts for advice including Michael Taxin and Mark Schwartz, a tax attorney.

Thereafter, Press had several discussions with Dennis Daly, Senior Assistant Counsel for the Commission and Deputy Attorney General Fusco concerning a resolution of the matter in controversy. By way of letter dated May 30, 1984, addressed to Daly, Press requested a hearing on petitioner's behalf and stated the following:

> This will confirm my telephone conversation with you on 5/25/84 wherein I indicated that I represent Mr. McGuire in this matter and further, that I had a series of phone conversations with Ralph Fusco in March 1984 wherein we have been attempting to resolve this matter.
>
> You indicated that if the D.G.E. would remove any objections to a renewal of Mr. McGuire's key license, that you would make a similar recommendation to the Commission. Following our discussions, I spoke with Mr. Fusco who indicated that if Mr. McGuire cleans up his tax returns he would look very favorably towards removing any objections. I have sent Mr. McGuire to an extremely competent C.P.A. who is presently amending the 1981 Return and preparing the 1982 and 1983 Returns which Mr. McGuire has been granted an extension for filing same. Once these Returns are completed and filed with the IRS, I will forward everything to Mr. Fusco and yourself.
>
> It is unfortunate that Mr. McGuire ran into difficulty due to what I perceive and which the C.P.A. perceives was

> incompetent tax advise by Mr. McGuire's former accountant. (P-3). (Emphasis in the original)

Mr. Press testified that as he proceeded through the matter, that a decision was ultimately reached whereby it was agreed that petitioner would amend his tax returns for two years brought into question by the Division. Mr. Press subsequently sent a letter dated June 25, 1984, addressed to Daly and Fusco, which stated as follows:

> Following up my correspondence of May 30, 1984 a copy of which I attach hereto for easy review, I herewith supply copies of the following documents:
>
> 1. Copy of Federal and State Income tax returns for 1983.
>
> 2. Copy of Federal and State Income tax returns for 1982.
>
> 3. Amended U.S. Individual tax return Form 1040 for the calendar year 1981.
>
> 4. Copies of four checks all dated 6/22/84 from Lawrence and Elizabeth McGuire to the Internal Revenue and the State of New Jersey in the amounts of $4,397.00, $11,127.00, $1,686.00 and $282.00.
>
> I trust that all of these documents fully comply with your requests. As you can see Mr. McGuire is paying over $17,000.00 to State and Federal Income tax agencies.
>
> I would appreciate your reviewing these enclosures and contact me as soon as possible concerning your position regarding new licensing Mr. McGuire. (P-3).

It was Press' understanding that the Division's and/or the Commission's tax department would review the amended tax returns and correspond with the attorney if there was a problem. Press heard nothing from the Division or the Commission. Subsequently, in or about July 1989, petitioner contacted Press to advise the lawyer that the Division had filed a complaint against petitioner. Press then contacted Daly to express his surprise that the complaint dealt with the identical issues that had already been resolved. Press stated that Daly indicated that perhaps there were other issues in the complaint and that was the reason for its issuance. Press asserted that Daly was conciliatory in their conversation and recalled

that the agreement was made to have petitioner file amended tax returns, however, there was nothing Daly could do about the new complaint. Press sent a letter, dated July 8, 1989, to confirm their conversation. Daly did not respond to the letter.

On cross-examination, Press admitted there was nothing in writing from either the Division or the Commission which made a demand upon petitioner to file an amended tax return. Press insisted, moreover, that there were oral representations to that effect by way of discussions with both Mr. Dennis Daly of the Commission and Mr. Fusco of the Division. It was Press' understanding that the Division would remove its objections to petitioner's relicensure if petitioner filed an amended tax return and eliminated the employee business expenses reported on petitioner's 1981 tax return. When Deputy Attorney General Fusco asked Mr. Press:

> Q. Is that your understanding of a demand being made that Mr. McGuire file an amended return?

Mr. Press answered:

> A. That's correct. (TR. III, p. 46)

Mr. Press continued to testify, in part, that:

> ...He indicated to me on May 25 of '84, he being Mr. Daly, that the DGE would remove any objections to a renewal of Mr. McGuire's key license if Mr. Fusco made the same recommendation to the Commission. (TR III, p. 46).

In a subsequent letter, dated July 8, 1989, Press wrote to Daly and stated, in part, as follows:

> Thank you for your telephone call of 6/26/89 wherein you did recall the resolution of the tax questions which the Commission was previously concerned about and our agreement to provide amended tax returns for the years in question. It was my specific understanding that the amended returns resolved any questions as to re-licensing. (P-4).

There were no writings to Press from either Daly or Fusco.

Petitioner offered two witnesses who testified as to petitioner's reputation and good character. Richard Zapulla, Sr., Senior Vice President of Casino Operations,

Trump Taj Mahal Hotel and Casino (Taj Mahal), testified that he has known petitioner for ten years and that petitioner has an outstanding reputation in the casino gaming industry. Zappulla asserted that he had forgotten what the Division's complaint against petitioner concerned, however, it would make no difference to him because Zappulla has known petitioner to be an outstanding citizen and a great employee. Zappulla testified that he did not know anything bad about petitioner.

Mr. Wolf Lichten, employed by the Taj Mahal in casino marketing, asserted that he had worked with petitioner and that petitioner was highly regarded in the gaming industry and the Atlantic City community. Lichten asserted that petitioner had always been a gentlemen and that his word was his bond.

Mr. Lichten admitted that the Division had opposed his licensure as a casino employee license for gambling in Atlantic City. Prior to his licensure, Lichten had been a casino gambling patron and incurred significant amount of debt to the casinos. Those debts have been eliminated and, by way of an OAL hearing, an ALJ recommended that the Commission should issue Lichten a license. Lichten testified that, notwithstanding the charges brought against petitioner by the Division, petitioner has always demonstrated good character.

DISCUSSION AND CONCLUSIONS

N.J.S.A. 5:12-86c (1) as incorporated within Section 86g of the Act

In its public policy declaration, the Legislature held that a primary purpose of the Act was to insure "public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b (6). It further asserted this public interest by enacting N.J.S.A. 5:12-1b (8), which 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 shall 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 authorities established by this act any**

> assistance and information necessary to assure that the policies declared by this act are achieved. Consistent with this policy, it is the intent of this act to preclude the creation of any property right in any license, registration, certificate or reservation permitted by this act, the accrual of any value to the privilege of participation in gaming operations, or the transfer of any license, registration, certificate, or reservation, and to inquire that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege.

Thus, the Act requires that every casino employee be either registered with or licensed by the Commission. N.J.S.A. 5:12-89, 5:12-90, 5:12-91. In addition, these statutes provide that a license shall be denied to an employee or a key employee in the event that employee is disqualified on the basis of the criteria found in section 86 of the Act. Moreover, section 86g grants the Commission the power and authority to deny a casino license to any person who is disqualified on the basis of any one of the statutory listed criteria, whether or not the disqualifying offense was prosecuted in a court of competent jurisdiction.

Section 86 (1) of the Act, as amended, mandates that a person who has been convicted of any of the offenses enumerated thereunder in any jurisdiction shall be disqualified from licensure. Section 86g provides that the Commission shall deny a casino license to any person who 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. ..." As was said in Div. of Gaming v. Boardwalk Regency, 12 N.J.A.R. 301 at 317:

> In enacting the Casino Control Act, the Legislature sought to maintain the integrity of the casino industry by providing, among other things, a statutory mechanism to automatically disqualify certain persons from registration and licensure who had committed specific criminal offenses in any jurisdiction N.J.S.A. 5:12-86c (1). It is not the object of the Division to relitigate each criminal offense but, rather, to affirmatively demonstrate through an administrative proceeding that the disqualifying offense occurred and under what circumstances it occurred. Even where the disqualifying offense had not been prosecuted in a court of competent jurisdiction or where the offense had been downgraded to be a lesser, non-disqualifying matter; the Legislature provided the Casino Control Commission with the authority to deny an individual with licensure to work in the casino industry. N.J.S.A. 5:12-86g.

The Division alleges that employee business expense deductions claimed by petitioner on his 1981 Federal Income Tax Return were improper and analogous to a theft offense under New Jersey statutes, N.J.S.A. 2C:20-3 and, therefore, a disqualifying offense pursuant to N.J.S.A. 5:12-86c (1) despite the fact that the conduct was not prosecuted under the criminal laws of this State, as provided by section 86g of the Act. Theft by unlawful taking or disposition under N.J.S.A. 2C:20-3 provides as follows:

> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.
>
> b. Immovable property. A person is guilty of theft if he unlawfully transfers any interest in immovable property of another with purpose to benefit himself or another not entitled thereto.

In enacting the Code of Criminal Justice, the New Jersey Legislature provided for the grading of theft offenses. Under N.J.S.A. 2C:20-3b (2) (a), the statute provides that theft constitutes a crime of the third degree if the amount involved exceeds $500 but is less than $75,000.

Pursuant to N.J.S.A. 5:12-86c (1), theft and related offenses which constitute crimes of the second or third degree are per se disqualifying offenses for licensure in the New Jersey casino industry.

Under Internal Revenue Code (I.R.C.) section 162 (26 U.S.C.A. § 162), expenses for entertainment, gifts and travel are permissible business deductions in computing a taxpayers federal income tax. Prior to 1962 there were few restrictions on the deductibility of entertainment expenses. There were virtually no limitations as to the scope of items which were considered within permissible entertainment or as to the amount of proof or substantiation of expenses incurred for the deductions. In the matter of Cohan v. Commissioner of Internal Revenue, 39 F. 2d. 540 (2d. Cir. 1930), the Court stated:

> In the production of his plays Cohan was obliged to be freehanded in entertaining actors, employees, and, as he naively adds dramatic critics. He had also to travel much,

> at times with his attorney. These expenses amounted to substantial sums but he kept no account and probably could not have done so. At the trial before the Board [Tax Court] he estimated that he had spent eleven thousand dollars in this fashion during the six months of 1921, twenty-two thousand dollars, between July 1, 1921 and June 30, 1922, and as much for his following fiscal year, fifty five thousand dollars in all. the Board refused to allow him any part of this, on the ground that it was impossible to tell how much he had in fact spent, in the absence of any items or details. The question is how far this refusal is justified, in view of the finding that he had spent much and that the sums were allowable expenses. Absolute certainty in such matters is usually impossible and is not necessary; the Board should make as close an approximation as it can, bearing heavily if it chooses upon the taxpayer whose inexactitude is of his own making. But to allow nothing at all appears to us inconsistent with saying that something was spent. True, we do not know how many trips Cohan made, nor how large his entertainments were; yet there was obviously some basis for computation, if necessary by drawing upon the Board's personal estimates of the minimum of such expenses. The amount may be trivial and unsatisfactory, but there was basis for some allowance, and it was wrong to refuse any, even though it were the traveling expenses of a single trip. It is not fatal that the result will inevitably be speculative; many important decisions must be such. Id. at 543-544.

Thus, the Second Circuit instructed that the trial court should approximate the taxpayers expenses when the taxpayer has claimed unsubstantiated business deductions for purposes of federal income tax.

Subsequently, in 1962, Congress enacted I.R.C. (26 U.S.C.A.) section 274 in order to narrow the scope of deductions allowed by I.R.C. (26 U.S.C.A.) section 162. Section 274 imposed some limitations on section 162 with the additional requirement of substantiation of the expense. A major limitation in section 274 requires that expenses related to entertainment, amusement, or recreational activity must be directly related to or associated with the taxpayer's trade or business in order to be deductible.

With regard to substantiation of a business expense deduction, 26 U.S.C.A. section 274 (d) provides, as follows:

> **Substantiation required.**--No deduction or credit shall be allowed--

> (1) under section 162 or 212 for any traveling expense (including meals and lodging while away from home),
>
> (2) for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity,
>
> (3) for any expense for gifts, or
>
> (4) with respect to any listed property (as defined in section 280F(d)(4),
>
> unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift. The secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense which does not exceed an amount prescribed pursuant to such regulations. This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i)).

Petitioner contends that he entertained certain patrons of the Golden Nugget and, in good faith, deducted the estimated amounts incurred on his 1981 federal income tax return. He admits that he was not authorized by his supervisors to carry on this activity, however, he did so in furtherance of the casino's and his business opportunities. He further admits that he does not have documentation to substantiate the business expenses he deducted from his 1981 federal income tax but, rather, that he estimated his expenses.

As to the issuance of estimating business expenses, the Division's own witness, Robert W. Latimer, asserted that in 1981 it was permissible for a taxpayer to estimate deductions on his/her federal income tax return. Further, the language of section 274(d) of 26 U.S.C.A. appears to grant the Secretary of Treasury, through his/her designees, broad latitude with regards to the enforcement of requiring substantiation for deductions where it says, in part:

> ... The Secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of the expense which does not exceed an amount prescribed pursuant to such regulations. ...

In support of petitioner's position that his former accountant accepted petitioner's representations for the 1981 business expense deductions; Mr. Michael Taxin asserted that in an IRS audit of a taxpayers return, oral documentation was completely acceptable in the absence of written documentation and when no other forms of documentation were available. He also asserted under circumstances of an IRS audit, the amount of deduction by the taxpayer would be viewed against the taxpayers total income. Mr. Taxin's assertion may be the relaxation of the substantiation requirement, under section 274 (d), where the " ... requirements .... shall not apply in the case of an expense which does not exceed an amount prescribed ... (26 U.S.C.A. 274 (d)). Petitioner's position is further buttressed by the fact that his 1981 federal income tax return was neither questioned nor challenged by the I.R.S. Even subsequent to petitioner's filing an amended 1981 tax return in 1984, under protest and at the insistence of the Division, the IRS neither questioned nor sought any sanctions of petitioner by way of penalties or fines.

Given all of the above I cannot find or conclude that petitioner committed any offense which would be analogous to N.J.S.A. 2C:20-3. I **CONCLUDE**, therefore, that the Division has failed to carry its burden to prove, by a preponderance of the credible evidence, that petitioner claimed improper deductions on his 1981 Federal Income Tax Return or that he committed a disqualifying offense under section 86c (1) of the Act.

N.J.S.A. 5:12-89b (2), GOOD CHARACTER, HONESTY AND INTEGRITY

Pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 89b(2) of the Act, petitioner McGuire is required to establish his good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8; Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985); In re Boardwalk Regency Corp. Casino License, 90 N.J. 361 (1982). When, as here, the Division raises the issue as to the licensee's good character, honesty and integrity, it is incumbent upon the licensee to present clear and convincing proof of facts upon

which this tribunal may reach a reasonable conclusion. Boardwalk Regency, supra; In the Matter of the Application of Boardwalk Regency Corp. and the Jemm Company for Casino License, Casino Control Commission (November 13, 1980). In accordance with the strict regulatory provisions intended by the Legislature, it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure.

Clear and convincing, as a standard, falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the fact alleged is true; i.e., that petitioner possesses the requisite good character, honesty and integrity. The standard requires more than a mere balancing of probabilities, but less than absolute certainty. A reasonable certainty is required. Lepre v. Caputo, 131 N.J. Super. 118 (L. Div. 1974); Germann v. Matriss, 104 N.J. Super. 466 (App. Div. 1969).

Having concluded that petitioner did not take improper deductions on his Federal Income Tax Return and, the Division having failed to produce any evidence with regard to alleged violations of credit regulations, I **CONCLUDE** that the Division's charge that either or one of these events negatively impacts on petitioner's good character, honesty and integrity is without merit. Petitioner has clearly and convincingly established his good character, honesty and integrity by virtue of licensure as a key employee in the casino industry. Nothing has been demonstrated or shown otherwise. I **CONCLUDE**, therefore, that petitioner possesses the requisite good character, honesty and integrity as required by section 89b(2).

ORDER

Accordingly, it is **ORDERED** that the Division's objection to the renewal of petitioner's casino key employee license be and is hereby **DISMISSED** and that the Commission renew petitioner's license pursuant to the provisions found at N.J.S.A. 5:12-88.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION** who 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

16 July 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

7-19-90
DATE

Dolores Dost
CASINO CONTROL COMMISSION

Mailed to Parties: Jayne LaVecchia

JUL 19 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Lawrence McGuire
Michael Taxin
Richard L. Press, Esq.
Richard Zappulla, Sr.
Wolf Lichten

For the Respondent:

Lawrence McGuire
Roy VanTassel
Robert Latimer

EXHIBIT LIST

For the Petitioner:

P-1 Amended federal income tax return for the year 1981, dated 6-25-84
P-2 Letter dated 6-25-84
P-3 Letter dated 5-30-84
P-4 Letter dated 4-8-89

For the Respondent:

R-1 1981 federal income tax return
R-2 Affidavit of Rick Freizer
R-3 Complaint
R-4 Complaint
R-5 Letter from Mr. Gallagher

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-299
APPLICATION NO. 074459-22
(REGISTRATION NO. 072770-40)
OAL DOCKET NO. CCC 08609-89
ORDER NO. 90-41-4

APPLICATION OF JAMES R. MEE, JR.
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 October 17, 1990,

IT IS on this 30th of November 1990, ORDERED that the initial decision is adopted; 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

IT IS FURTHER ORDERED that James R. Mee, Jr., is prohibited from reapplying for or obtaining 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 this denial shall not affect James R. Mee, Jr.'s current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8609-89
AGENCY DKT. NO. 89-EA-299

APPLICATION OF
JAMES R. MEE, JR.,
FOR A CASINO
EMPLOYEE LICENSE.

James R. Mee, Jr., petitioner pro se
Ralph Fusco, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: August 2, 1990 Decided: August 28, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

James Mee, a casino hotel worker, who is registered with the Casino Control Commission (Commission), applied for a casino employee license in order to serve alcoholic beverages at a casino. The Division of Gaming Enforcement (Division) objected to his licensure by letter to the Commission dated December 28, 1988, but not to his continued registration, on the grounds that he lacked the good character, honesty and integrity required of licensees pursuant to N.J.S.A. 5:12-89b(2) and 90b.

The applicant failed to appear at a scheduled hearing and his application was denied. He appealed to the Commission and was granted a new hearing. The matter was transmitted to the Office of Administrative Law (OAL) on November 9, 1989 to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing order identified the above mentioned character issue as the issue to be determined at a plenary hearing. A plenary hearing convened on June

26, 1990 at which time the Division raised an additional issue for determination pursuant to N.J.S.A. 5:12-86b. That section of the Casino Control Act (Act) requires applicants to divulge all information material to qualification. The application form requests one to list all arrests. The Division alleged that the applicant failed to list some arrests in Pennsylvania.

The issue was added and the applicant was granted a postponement in order to obtain legal counsel.

On August 2, 1990, a new plenary hearing convened, the applicant having elected to proceed without an attorney.

An important factor in this case was the applicant's demeanor at the plenary hearing.

It was immediately obvious that the applicant had failed to divulge information material to his qualification, beginning with his address. The applicant listed his grandmother's house in Mystic Island, New Jersey as his only address on section seven of the application which states: "Beginning with your current residence(s) and working backwards, provide the following information with respect to each place where you have lived during the past (5) years." The form then asks for dates, addresses and phone number.

The applicant had only resided in Mystic Island for a very brief period; during summer vacations as a child. He did not list his residences in Haverford, Pa., the locality of his three undivulged arrests.

According to the FBI rap sheet, the applicant was arrested on February 21, 1984 in Havertown, Pa., and charged with conspiracy and unauthorized use of a car. He was arrested again in Havertown, Pa. on April 7, 1985, and charged with theft by unlawful taking, receiving stolen property and hit and run. A third arrest in Havertown does not appear on the rap sheet, but an arrest in Margate, New Jersey for possession of under 25 grams of marijuana, growing marijuana and possession of drug paraphenalia on June 17, 1987 does appear. The Margate arrest was the only arrest that the applicant divulged.

The applicant explained that he either thought that the incidents were not arrests or that they happened when he was less than 21 or, alternatively, that they were all discharged and therefore not to be considered. He said that the unauthorized use of a motor vehicle charge in February of 1984 was merely a result of his using his girlfriend's father's car. During the examination on this issue, the petitioner exclaimed that the Deputy, by asking him questions concerning his criminal history, was playing cat and mouse with him.

The applicant referred to an assault, criminal mischief and trespassing charge not contained on the FBI rap sheet. He explained this as an occurrence at his wife's mother's house. He said he pled guilty and received a 30 day suspended sentence. He said that he did not feel that this was a matter of record and therefore did not divulge it.

He explained the 1985 theft charge by saying he bought an illegal inspection sticker for a car and was caught moving his car from his father's house to his mother's house. He received Pennsylvania's equivalent to the New Jersey PTI program, therefore, he said, he did not feel that this created a record.

He again reiterated that since these events occurred before he was 21 he need not report them.

When it was pointed out to him that the application calls for a history of all arrests, including juvenile arrests, he hastened to point out that he did not check the box either "yes" or "no" which answers the question "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?" He argued that he was unsure of the question so he did not check the box or answer it. He implied that this excused him. In addition, he argued that he did not even read the entire application, someone at work helped him to fill it out.

When it was pointed out to him that the unreported simple assault charge occurred in January of 1987 when he was more than 21, he said that he was under the impression that a suspended sentence was not a criminal record.

The arrest in Margate was reported on the application form. The police report reveals that marijuana plants were growing in a second floor window at the applicant's residence. A search warrant was obtained and executed. The applicant and his wife were the only residents found at home. They were arrested and charged.

The applicant said that these charges were dismissed. Apparently he obtained pretrial intervention or a conditional discharge because the charges have been dismissed. He said he had two urinalysis performed by court order, both of which were negative for drugs.

He hedged his answers to the questions asked by the deputy concerning this arrest too. He suggested that the plants were not his but his wife's. Then he retracted that statement. He then again denied that the plants were his. Then he said that neither he nor his wife used marijuana. He said the plants were a biological experiment. He said all of this in a very challenging tone to the deputy. He was angry and hostile about being questioned. He refused to place into evidence a letter of recommendation he had obtained for the hearing.

The applicant had an impudent response to every question and an honest answer to none. This was not occasioned however, by the deputy's demeanor or tone of voice. The deputy was professional and polite at all times during the hearing.

It was obvious that the applicant had difficulty with authority. It was also equally obvious that he was unable to tell the truth. It is not surprising that someone would try to conceal a criminal record. It is surprising to find someone who lies about things not relevant to the issues. For instance, in the hearing scheduled on June 26, 1990, the applicant said that he "went to college for five years. (he) didn't come down here to have (his) number two license now (sic) being taken away from (him) forever." But at the plenary hearing on August 2, 1990, it appeared from the applicant's own testimony that he has just completed his freshman year at Drexel University.

This applicant is seriously deficient in the qualities required of casino licensee's. He does not tell the truth. His character defects are plainly seen after a short interview. He has utterly failed to convince me that he has integrity.

I therefore **CONCLUDE** that the applicant lacks the good character, honesty and integrity required for casino employee licensure by N.J.S.A. 5:12-89b(2) and 90b.

I also **CONCLUDE** that the applicant has failed to divulge information material to his qualification for licensure as required by N.J.S.A 5:12-86b.

I therefore **DISMISS** the application for casino employee licensure.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Aug 28, 1990
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

8/29/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 31 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

James R. Mee, Jr.

For the Respondent:

James R. Mee, Jr.

EXHIBIT LIST

For the Petitioner:

None

For the Respondent:

R-1 Personal History Disclosure Form - 2A
R-2 Investigation Report, Margate Police Department June 18, 1987
R-3 United States Department of Justice Federal Bureau of Investigation November 12, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-99
LICENSE NO. 044702-21
OAL DOCKET NO. CCC 00152-90
ORDER NO. 90-47-9

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF MICHAEL A. MILLER

ORDER

A hearing 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 November 28, 1990,

IT IS on this 31st day of December 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 152-90
AGENCY DKT. NO. 90-EA-99

MICHAEL A. MILLER,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Michael A. Miller, the petitioner, pro se

James J. Armstrong, Deputy Attorney General, for the respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: September 6, 1990 Decided: September 26, 1990

BEFORE **STEVEN L. CARNES,** ALJ:

STATEMENT OF THE CASE

The petitioner, Michael A. Miller applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (blackjack and craps dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the licenses by reason of its contention that the petitioner lacked the requisite good character, honesty and integrity, pursuant to sections 89b(2) and 90b, which incorporates section 89b(2) by reference, and that the petitioner lacked the requisite financial stability, integrity

and responsibility for casino employee licensure, pursuant to section 90b, which incorporates section 89b(1) by reference.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license, so that he could be employed as a blackjack and craps dealer at Harrah's Marina Hotel and Casino. By letter to the Commission, dated August 28, 1989, the Division objected to the petitioner's application for licensure as a blackjack and craps dealer, asserting that the petitoner had defaulted on a student loan, and that he had not filed a federal or State income tax return for five years. Based upon these actions, the Division asserts that the petitioner lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference. The Division further asserts, based upon these actions, that the petitioner lacks the requisite financial stability, integrity and responsibility for casino employee licensure, pursuant to section 90b, which incorporates section 89b(1) by reference. Based upon this report, the Commission notified the petitioner on September 25, 1989, that there were questions concerning his qualifications under the Casino Control Act and that he had the right to a hearing. By application dated December 20, 1989, and received by the Commission on that date, the petitioner requested a hearing. On December 27, 1989, the Commission transmitted the matter to the Office of Administrative Law, where it was received on January 8, 1990, 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 in the matter before me on April 20, 1990. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether the petitioner possesses the requisite financial stability, integrity and responsibility for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(1), as incorporated within section 90b.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

A hearing was held on September 6, 1990, at the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record closed.

THE FACTS

The Division is challenging, in part, the petitioner's financial stability, integrity and responsibility. The basis of this objection is the petitioner's personal financial record. The petitioner obtained a student loan from the Bank of New Jersey in 1978. This loan was guaranteed by the New Jersey Higher Education Assistance Authority (NJHEAA). On February 28, 1983, the petitioner went into default on his loan. As NJHEAA had guaranteed the loans, it paid the Bank of New Jersey $2,600.12, a total that included principal and interest. As of January 9, 1989, the petitioner owed NJHEAA a balance of $3,505.44 (R-1). The petitioner's 1983 State tax return was applied to this debt. After being questioned by the Division regarding this debt, the petitioner attempted to contact the Bank of New Jersey regarding the repayment of the student loan. The Bank of New Jersey has since been purchased by the Chemical Bank. Chemical Bank has no record of the loan, as a result, the petitioner did not know whom to contact regarding repayment. The petitioner was advised at the hearing that NJHEAA is the proper agency to repay. He is going to contact NJHEAA in an attempt to enter into a repayment agreement.

The petitioner failed to file any federal or State income tax returns for the years of 1985 through 1989 (R-1). The petitioner testified that he had intended to file his tax returns, but that he had been lazy and irresponsible. The petitioner contacted his past employers and obtained copies of his W-2 statements. The petitioner took his records to H&R Block who prepared the petitioner's federal and State income tax returns for 1986 through 1989 (P-1 through P-7). These returns were filed in March and April 1990. The petitioner did not file an income tax return for 1985 as H&R Block had informed him that the statute of limitations had run on that year's income tax return and that the petitioner need not file that return.

The petitioner graduated form Vineland HIgh School in 1978. He then attended Winston-Salem State College for two years. He transferred to Rutgers - New Brunswick in 1981, but he quit school because he ran out of money and needs 17 credits for a degree. From October 1982 through November 1983, the petitioner was employed as a housekeeper at the Tropicana Hotel and Casino. He was terminated from this position for leaving an assigned area without authorization. He remained unemployed until he was hired as a change person by the Golden Nugget Hotel and Casino in 1985. He held this position for one year and left in the summer of 1986 in order to accept a craps and blackjack dealer position at Trump's Plaza Hotel and Casino. The petitioner was laid off from this position in 1987, and

ever since has been employed on a part-time basis as a craps and blackjack dealer at Harrah's Marina Hotel and Casino.

The petitioner is 30 years old and supports two minor children. He has entered into support agreements concerning the children, and he is current in his payments. He is current in paying back a student loan from Rutgers University. This loan is nearly satisfied. The petitioner has no criminal record. He plays football in the Atlantic City Casino League, and has been a good employee at Harrah's Marina for over three years.

The petitioner submitted two character reference letters in his behalf. The first was written by Glenn Cunningham (P-8), and the second was written by Joseph Monte (P-9). Both men are pit bosses at Harrah's Marina. Both men wrote that they have supervised the petitioner on numerous occasions and that he has "always performed in a courteous and professional manner." (P-8 & P-9).

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail the underlying circumstances. Accordingly, I am persuaded to accept petitioner's testimony in all respects.

I am persuaded that his misconduct was in part, due to immaturity. I am also inclined to believe that his financial problems were the result of his inexperience, laziness and inattentiveness in dealing with his financial affairs. The petitioner has matured as an individual. Previously, he did not pay close attention to his financial matters. He is now more responsible. He is not incurring any new debts, has filed his tax returns for the last four years, and is attempting to make arrangements to repay his NJHEAA loan. His growing maturity and improved sense of responsibility has been demonstrated in the last three years by his success in the casino industry and his acceptance of responsibility in supporting his two children.

FINDINGS OF FACT

1. The petitioner obtained a student loan from the Bank of New Jersey in 1978. This loan was guaranteed by the New Jersey Higher Education Assistance Authority.

2. On February 28, 1983, the petitioner went into default on his loan. As the New Jersey Higher Education Assistance Authority had guaranteed the loans, it paid the Bank of New Jersey $2,600.12, a total that included principal and interest.

3. As of January 9, 1989, the petitioner owed the New Jersey Higher Education Assistance Authority a balance of $3,505.44.

4. The petitioner's 1983 State tax return was applied to this debt. After being questioned by the Division regarding this debt, the petitioner attempted to contact the Bank of New Jersey regarding the repayment of the student loan. The Bank of New Jersey has since been purchased by the Chemical Bank. Chemical Bank has no record of the loan, as a result, the petitioner did not know whom to contact regarding repayment.

6. The petitioner was advised at the hearing that the New Jersey Higher Education Assistance Authority is the proper agency to repay. He is going to contact New Jersey Higher Education Assistance Authority in an attempt to enter into a repayment agreement.

7. The petitioner failed to file any federal or State income tax returns for the years of 1985 through 1989.

8. The petitioner took his records to H&R Block who prepared the petitioner's federal and State income tax returns for 1986 through 1989. These returns were filed in March and April 1990.

9. The petitioner did not file an income tax return for 1985 as H&R Block had informed him that the statute of limitations had run on that year's income tax return and that the petitioner need not file that return.

10. The petitioner graduated form Vineland High School in 1978. He then attended Winston-Salem State College for two years. He transferred to Rutgers - New Brunswick in 1981, but he quit school because he ran out of money and needs 17 credits for a degree.

11. From October 1982 through November 1983, the petitioner was employed as a housekeeper at the Tropicana Hotel and Casino. He was terminated from this position for leaving an assigned area without authorization.

12. He remained unemployed until he was hired as a change person by the Golden Nugget Hotel and Casino in 1985. He held this position for one year and left in the summer of 1986 in order to accept a craps and blackjack dealer position at Trump's Plaza Hotel and Casino. The petitioner was laid off from this position in 1987, and ever since has been employed on a part-time basis as a craps and blackjack dealer at Harrah's Marina Hotel and Casino.

13. The petitioner is 30 years old and supports two minor children. He has entered into support agreements concerning the children, and he is current in his payments.

14. He is current in paying back a student loan from Rutgers University. This loan is nearly satisfied.

15. The petitioner has no criminal record. He plays football in the Atlantic City Casino League, and has been a good employee at Harrah's Marina for over three years.

APPLICABLE LAW

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> (1) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant, including but

not limited to bank references, business and personal income and disbursements schedules, tax returns and other reports filed with government, agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission or the division.

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or

by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

e. 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.

DISCUSSION

The Division contends that the petitioner lacks the requisite financial stability, integrity and responsibility for casino employee licensure, pursuant to section 90b, which incorporates section 89b(1) by reference. The Division further contends that the petitioner lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference.

(A) N.J.S.A. 5:12-89b(1) and N.J.S.A. 5:12-90b

Under section 89b(1) for casino key employee licensure, and under section 90b, which incorporates section 89b(1) by reference, for casino employee licensure, Mr. Miller was required to establish, by clear and convincing evidence, his financial stability, integrity and responsibility. In the matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 250 (1979). In Resorts, the Commission held that "this standard encompasses all financial aspects of the Applicant, the holding company and other qualifiers. In addition to basic financial solvency or soundness, the standard relates to honesty and forthrightness in business dealings. Further, it includes the care and prudence exercised by the entity or individual in managing, preserving and enhancing the assets entrusted to such entity or individual." Id. at 250.

In Velasquez v. Division of Gaming Enforcement, OAL DKT. CCC 4251-87 (July 7, 1988), aff'd. Casino Control Comm. (September 23, 1988), Judge Law held that the petitioners recent attempts to establish a payback schedule, although commendable, were "too recent to demonstrate his 'financial stability, integrity and responsibility.'" In In the Matter of the Application of Gilbert L. Smith as a Casino Employee, OAL DKT. CCC 2252-79 (November 8, 1979), mod., Casino Control Comm. (March 20, 1980), the Commission rejected the ALJ's finding of a lack of financial stability and stated:

> Although evidence of financial stability may also be probative of financial integrity, these concepts are not identical. Central to the question of financial stability is the Applicant's solvency or soundness. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, supra at 7. Of primary importance to the Commission is the Applicant's present financial stability. Proofs adduced at the hearing establish that the Applicant was, at the time of the hearing, indebted to four judgment creditors in the sum of approximately $1,300. The Commission may certainly take notice of the fact that residents of this State are and have been for some time enduring double digit inflation in general, high unemployment and soaring consumer prices. Atlantic City in particular, where the Applicant has resided for the past 19 years, has in the past several decades suffered from blight and economic decay. See N.J.S.A. 5:12-1(b). Against this backdrop, the indebtedness of the Applicant in the approximate sum of $1,300 cannot be viewed as uncommon. Furthermore, the Commission is satisfied that the record on this issue permits the inference that the judgments against the Applicant which were outstanding as of October, 1979 have been, or will be, satisfied within a reasonable period of time. We believe we may properly anticipate that employment in the casino industry will enable the Applicant to make substantial progress in this regard in the foreseeable future. In light of all of the foregoing, the Commission finds that the Applicant presently possesses the financial stability required by N.J.S.A. 5:12-89(b)(1). [Final Commission Decision at 13-14]

In Scott Onque v. Division of Gaming Enforcement, OAL DKT. CCC 8216-88 (April 10, 1989), rejected by the Casino Control Commission (June 1, 1989), Commission Decision (August 14, 1989), the Commission stated:

> What our decisions on financial stability reveal is that prime emphasis will be placed upon current and prospective financial stability. For example, in In the Matter of the Application of John J. Taylor for Licensure as a Casino Key Employee, OAL Docket No. CCC 4044-79 (May 8, 1980), the Commission upheld the ALJ's determination that neither the applicant's previous financial problems nor the fact that he had filed for bankruptcy on two separate occasions prevented him from establishing his present financial stability in light of the fact that he was presently meeting his financial obligations.
>
> In Application of Leonard Grabel for a Casino Employee License, OAL Docket No. CCC 4120-82 (August 2, 1984), the applicant defaulted on at least ten accounts which had been written off by the creditors. He was unable to earn sufficient money to pay his bills, especially at the time of his divorce and while he was courting his second wife, because, by his own admission, he lived beyond his means. That admission notwithstanding, the Commission rejected the initial decision and granted the license sought by Mr. Grabel based largely on the fact that, as of the time of the hearing, his financial situation had stabilized. Past failings were outweighed by the status at the time of consideration of the license application.

> Here, the ALJ made a specific finding that petitioner has established his present financial stability. Initial decision at page 22. The record before us supports that conclusion. Notwithstanding the fact that Mr. Onque has had a number of credit accounts charged off as uncollectible and that he fell behind on student loans, these failures are being, or have already been, rectified. Most of the credit accounts have now been satisfied and those remaining are being paid off in regular installments, as are the student loans. Petitioner's past financial indiscretions may be attributed in large part to immaturity and failure to take his obligations seriously while a student and in the early years of employment. He is currently well regarded by his supervisors at TropWorld which would now like to promote him to a Cage Manager position, requiring a key employee license.
>
> Given all of the above circumstances, it is our conclusion that Mr. Onque has clearly and convincingly demonstrated his present and prospective financial stability. [Onque Commission Decision at 6, 7, 8]

The Division centers its case around the petitioner's failure to timely file his income tax returns. The petitioner has now filed his past returns. In every case, he was due a refund from both the federal and State governments. He does not have a history of not paying his debts, and he is current in his child support payments. The only debt he has not repaid is his NJHEAA loan. The petitioner attempted to secure information regarding the status of his loan from the bank where he obtained the loan. However, the bank no longer has records of the loan (probably because it was satisfied by NJHEAA), and the bank could not assist the petitioner. The petitioner, now having been made aware that NJHEAA holds the loan, is attempting to contact NJHEAA in order to enter into a repayment schedule.

The petitioner has been employed in the casino industry on a part-time basis over the past three years. He has been a good employee at Harrah's. The petitioner's filing of his outstanding tax returns and his attempts to enter into a repayment schedule to repay his NJHEAA loan are indicative of the petitioner's effort to regain financial stability, an effort which, in turn, reflects positively upon the petitioner's financial integrity and responsibility.

Based upon the above, I **CONCLUDE** that the petitioner has established his present financial stability, and that he has established, by clear and convincing evidence, that he meets the statutory criteria of financial stability, integrity and responsibility for a casino employee license under section 90b.

(B) N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b

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Under section 90b, which incorporates section 89b(2) by reference, Mr. Miller was required to establish, by clear and convincing evidence, his good character, honesty and integrity. Application of Resorts International, 10 N.J.A.R. at 248. In Resorts, the Commission held that an unfavorable reputation, although it raises questions that 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 License, 10 N.J.A.R. 295, 297-98 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. He did not owe the federal of State governments any taxes. In fact, he was due a refund in every case. In addition, the petitioner has fully accepted responsibility for his misconduct. He has regained control over his behavior, is attempting to repaying his student loan, has performed admirably within the casino industry during the past several years, is current in making his child support payments and has become a respected member of his community. Accordingly, the petitoner presents no risk to the public or to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Miller is a person of good character, honesty and integrity, and that he is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under sections 89b(2) and 90b.

DISPOSITION

It is **ORDERED** that the application of Michael A. Miller for the renewal of a casino employee license be **GRANTED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 26, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

9/27/90
DATE

CASINO CONTROL COMMISSION

SEP 28 1990

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

cad

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Petitioner's 1986 Federal income tax return

P-2 Petitioner's 1986 State income tax return

P-3 Petitioner's 1987 Federal income tax return

P-4 Petitioner's 1987 State income tax return

P-5 Petitioner's 1988 Federal income tax return

P-6 Petitioner's 1988 State income tax return

P-7 Petitioner's 1989 Federal income tax return

P-8 Letter of Glenn Cunningham, pit boss, Harrah's Marina, dated July 27, 1990

P-9 Letter of Joseph Monte, pit boss, Harrah's Marina, dated July 27, 1990

For the Respondent:

R-1 Investigation report, dated January 9, 1989

R-2 Petitioner's license renewal application, dated February 17, 1987

WITNESSES

For the Petitioner;

Michael A. Miller, the petitioner

For the Respondent:

Michael A. Miller, the petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-300
APPLICATION NO. 48911-21
REGISTRATION NO. 48733-40
OAL DOCKET NO. CCC 00939-89
ORDER NO. 90-4-15

RENEWAL APPLICATION OF
ROBERT S. MONTGOMERY,
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law (OAL); and an initial decision of the administrative law judge (ALJ) having been filed with the Casino Control 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 January 24, 1990,

IT IS on this 28th day of November 1990, ORDERED that, for the reasons stated on the record, this matter is remanded to the Office of Administrative Law with the following instructions:

(1) The Division of Gaming Enforcement (DGE) should offer in evidence: (a) the pay stubs, pay orders and check certifications of the applicant related to his alleged fraudulent collection of unemployment benefits which are purportedly contained in the archives of the Division of Unemployment; (b) a letter purportedly written by the applicant to the Division of Unemployment which accompanied the repayment agreement supposedly signed by the applicant; (c) the repayment agreement between the applicant and the Division of Unemployment and (d) the

current status of the applicant's indebtedness to the Division of Unemployment.

(2) Any other evidence relevant to the applicant's qualifications for licensure is to be admitted.

(3) All of the evidence of record is to be evaluated under N.J.S.A. 5:12-107(a)(6) which, as noted in the remarks of Commissioner Burdge and Acting Chair Armstrong incorporated herein, was misapplied in the initial decision.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 939-89

AGENCY DKT. NO. 89-EA-300

RENEWAL APPLICATION OF
ROBERT S. MONTGOMERY
FOR A CASINO EMPLOYEE LICENSE.

Scott E. Becker, Esq., for petitioner (Becker & Lands)

James Armstrong, Deputy Attorney General for respondent (Peter N. Perretti, Jr., Attorney General of New Jersey, attorney)

Record Closed: October 28, 1989 Decided: December 15, 1989

BEFORE **EDGAR R. HOLMES**, ALJ:

The Division of Gaming Enforcement filed a letter with the Casino Control Commission (Commission) recommending that it not renew the casino employee license of Robert S. Montgomery. The basis of the recommendation was an allegation that Montgomery fraudulently collected unemployment benefits while he was employed at a casino hotel. Montgomery requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A plenary hearing was conducted on September 28 and 29, 1989. The record was held open for an additional period of 30 days for briefs. The time within which to file an initial decision was extended by Order of the Commission until December 21, 1989.

The issues raised in this case are whether or not Montgomery committed acts equivalent to a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, g and 90e, and if so, does he possess the good character, honesty and integrity for casino employee

licensure required by N.J.S.A. 5:12-89b(2) and 90b, and is he rehabilitated pursuant to N.J.S.A. 5:12-90h.

In September 1982, petitioner Robert S. Montgomery lost his job. He applied for unemployment benefits on September 8, 1982, and began to collect. In July of 1983, Montgomery obtained employment at the Playboy Hotel and Casino. Beginning July 29, 1983, and continuing through September 4, 1983, he collected partial unemployment compensation benefits because he claimed that he was not fully employed during that period at the Playboy.

A regulation requires that an employer provide to any employee working on a reduced schedule, a pay stub identifying the employee and the employer and which reports the employee's wages and last day worked. The stub must also bear the legend: "less than full time remuneration because of lack of work." N.J.A.C. 12:17-4.2.

The primary purpose of the stub is so that an employee who is otherwise eligible for unemployment compensation benefits may use the stub in order to collect. A formula, not relevant here, is applied to the wage paid in order to determine the amount, if any, of the benefit grant. Montgomery testified that when he collected his partial unemployment benefits in July, August and September of 1983, he furnished the Division of Unemployment with his pay stub. He said they photocopied the stub and kept the copy.

On or about January 11, 1985, Ronald E. Burgin, an investigator for the Division of Unemployment, personally copied Montgomery's payroll records at the Playboy for the dates including July 29, 1983, through September 4, 1983.

The payroll stubs which Montgomery submitted to the Division of Unemployment must have been fraudulent, Burgin exclaimed, because there is a discrepancy between the computer record made of Montgomery's pay stubs by the Division of Unemployment and the computer record of Montgomery's pay stubs made by the Playboy. Burgin produced neither the copies of the payroll stubs which Montgomery provided to the Division of Unemployment nor a copy of the Playboy

records from which Burgin made his notes. He never examined the actual stubs and could only speculate about the ways in which they might have been fraudulent.

On April 15, 1984, April 22, 1984, April 29, 1984 and May 6, 1984, Burgin says that Montgomery was both employed and collecting unemployment compensation benefits. He decided this from his review of a computer printout showing benefits were paid to Montgomery and his own notes which he made from a computer payroll printout at the Playboy. He deduces that Montgomery committed fraud because the "system" does not permit the simultaneous collection of unemployment benefits and wages. Montgomery claims he only collected what he thought was due him.

Burgin also described the system devised for the collection of unemployment benefits. It is obvious from his description that the system was designed to make the prosecution of unemployment fraud simple and direct. The system is almost fool proof. I say "almost" because the system has been completely emasculated by computerization.

Here is the way the system is supposed to work: A working employee eligible for partial unemployment benefits must produce the pay stub as described above. An out of work eligible person must sign a "pay order," in order to collect an unemployment benefit check. The pay order contains blocks to check, either yes or no, after each of several questions such as: Are you now employed? Did you receive any holiday or vacation pay? Are you available for work? Are you seeking work? The correct responses will produce an unemployment benefits check on the spot. The benefits check itself bears a legend over the endorsement block which clearly indicates that endorsement of the check is a certification that the endorser was not employed during the period of time represented by the unemployment benefits check. On the face of the check is a list of the weeks covered by the check.

These items, i.e., the payroll stub, the pay order, and the certification on the back of the unemployment benefits check, were specifically designed to constitute proof where a claim of fraudulent receipt of benefits is made. These items, coupled with proof of wages paid from other employment at the time the benefits are claimed, provide the clearest evidence imaginable for proof at a hearing that a recipient of unemployment benefits committed fraud when he received benefits.

The items will constitute proof of fraud on behalf of the Division of Unemployment when fraud has actually been committed. They will also constitute proof of a recipient's innocence when no fraud has been committed.

But where were these records at this hearing? According to Burgin, once the unemployment benefits transaction has been recorded in a computer, the actual records are consigned to the "archives." The computer printout of the memorandum of the transaction thereafter stands in their place. Obviously, someone has ignored the admonition found in John VII,24; "Judge not according to the appearance."

The Division of Gaming Enforcement urges that, despite the hearsay nature of the exhibits, they are nevertheless admissible in a Casino Control Commission administrative hearing because N.J.S.A. 5:12-107(a)(6), and N.J.A.C. 19:42-2.1(d), permit the introduction of any relevant evidence despite any court rule to the contrary. But the evidence must be such that a reasonable person would rely upon it in the course of important business before it can form the basis for a finding of fact. This is one way of determining whether evidence is worthy of belief.

Although resort to court rules is not required by the Casino Control Act in determining when evidence is admissible, it would be foolish to ignore court rules in determining when evidence is worthy of belief. The reasoning behind court approved rules of evidence often depends upon the logic of belief.

Of course computer records may be admissible in courts of law under certain defined circumstances. See Comments to R. 1 (13) "Writing". But not all computer records are admissible in all courts of law.

The computer printouts offered in evidence in this case do not comply with the business entry exception to the hearsay rule. The rule requires that business records be "made in the regular course of business, at or about the time of the act, conditions or event recorded, and ( ) the sources of information from which (the record) was made and the method and circumstances of its preparation were such as to justify admission." R. 63 (13). There was no testimony in this case describing the method or circumstances in which the computer printouts were prepared, by whom they were prepared or when they were prepared. It is claimed they were made in the ordinary course of business.

The computer printouts and Burgin's notes do not comply with the best evidence rule. That rule requires the production of the original writing unless any one of eight exceptions obtains. R. 70. None do in the circumstances of this case. Because of the accuracy of modern photocopying equipment, the best evidence rule is waning in importance. It originated when clerks made handwritten copies of documents and brought only the copies to court. The courts were concerned about the accuracy of the clerk's copy. They held that the original, if available, was the best evidence, and a copy was not admissible into evidence. Basic Concepts in the Law of Evidence, An In-Depth Outline of the Younger NITA Lectures, Second Edition; The National Institute for Trial Advocacy; Robert E. Oliphant; 1977, p. 20. But here, Burgin did what clerks used to do; he copied payroll numbers from the Playboy computer printouts and brought his copies, not the printouts, to court.

In this case, the Division of Gaming Enforcement asserts, without having seen it, that a pay stub given to the Division of Unemployment by the petitioner was altered, forged or otherwise fraudulent. The petitioner asserts that it was not. The Division of Unemployment has a photocopy of the stub in its "archives." The petitioner saw no reason to keep his original once the government made a copy. The Division of Unemployment brought to court a computer printout made by an unknown person at an unknown time which purports to be a record of the amount of the pay recorded on the stub. The petitioner asserts the printout is incorrect.

No reasonable person would declare that Montgomery committed fraud based on the evidence in this case, knowing that the Division of Unemployment had a photocopy of the alleged fraudulent pay stub in its possession, together with a pay order and a certificate in Montgomery's own handwriting. Any reasonable person, in the conduct of important business, such as licensing, would want to see that stub. Such a person would also want to see the pay orders and endorsements on the benefits check before arriving at such a conclusion.

Courts of law view allegations of fraud with a wary eye. This is based on long practice with those who claim fraud. It is an easy cry to raise. Therefore, civil courts have required that fraud be proved by clear and convincing evidence. See cases collected at Note 6, R. 1(4) "clear and convincing."

In this case, I am not satisfied by a preponderance of the evidence that Montgomery committed fraud. I therefore **CONCLUDE** that the Division of Gaming Enforcement has failed to prove that Montgomery committed fraud against the Division of Unemployment in 1983 and 1984.

Because I conclude that no crime was committed, the issue of rehabilitation is moot. Also mooted is the question of whether or not Montgomery possesses the requisite good character, honesty and integrity required for casino licensure. Since Montgomery has previously satisfied the Commission that he has such good character, honesty and integrity, the failure of the Division of Gaming Enforcement to prove that he committed an offense cannot revive the issue. However, Montgomery's testimony, that he signed an agreement to repay the Division of Unemployment just in case they were "able to prove that (he) owed the money," may have raised an additional issue; does he possess the financial stability, integrity and responsibility for licensure as required by N.J.S.A. 5:12-89b(1) and 90b. I hasten to point out that an agreement to pay an obligation is not proof that it was acquired by fraud. But Montgomery seemed to indicate at the hearing that he has not satisfied this obligation because, although he signed the agreement to repay the Division of Unemployment, he had an undisclosed mental reservation not to pay the obligation at the time he signed it. This is like crossing your fingers when telling a lie; it doesn't save you from the consequences. That issue, of course, is not mooted by the conclusions made here, nor is the Division prejudiced by it, and the Division is free to litigate the issue in the future if its investigation warrants a new complaint.

I **ORDER** that the letter filed by the Division of Gaming Enforcement be **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 15, 1989
DATE

EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

12/15/89
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 19 1989
DATE

OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:
Robert S. Montgomery

For the Respondent:
Robert S. Montgomery
Ronald E. Burgin

EXHIBITS

For the Petitioner:

P-1 BC-256
P-2 Employer's Form

For the Respondent:

R-1 Claim Inquiry
R-2 Form B-98a
R-3 Schedule of overpayments
R-4 Cover Sheet of Mr. Burgin's Investigation
R-5 Notice of Hearing
R-6 Notice of Determination
R-7 Form B-98a
R-8 Schedule of Overpayment
R-9 Demand for Refund
R-10 Unidentified
R-11 Unidentified
R-12 Second Notice of Hearing
R-13 Claimant Ledger
R-14 Unidentified
R-15 Renewal Application

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-CSI-15
APPLICATION NO. 02131-70
VENDOR I.D. NO. 17084
OAL DOCKET NO. CCC 02850-90
ORDER NO. 90-45-9

APPLICATION OF NETWORK CONSTRUCTION COMPANY, INC. FOR A CASINO SERVICE INDUSTRY LICENSE AND QUALIFICATION OF RICARDO THOMPSON

ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of November 14, 1990,

IT IS on this 21st day of December 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted and Ricardo Thompson found qualified substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2850-90
AGENCY DKT. NO. 90-CSI-15

NETWORK CONSTRUCTION COMPANY, INC. and RICARDO THOMPSON, QUALIFIER,
Petitioners,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Ricardo Thompson, petitioner, pro se

Frederick J. McDonough, Deputy Attorney General, for the respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: August 7, 1990 Decided: September 20, 1990

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

PROCEDURAL HISTORY

This matter concerns the January 9, 1990 letter filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) regarding the issuance of a casino service industry license to the petitioners, Network Construction Company, Inc. (NCC) and Ricardo Thompson, as the qualifier. The petitioners requested a hearing and the matter was transmitted to the Office of

Administrative Law on April 11, 1990, to be heard 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 telephone prehearing conference was held on May 30, 1990, at which time the parties agreed that the issues in this matter are:

A. Whether the failure of Ricardo Thompson to make certain withholding payments to the Internal Revenue Service (IRS) constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such actions were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

B. Whether the petitioners possess the requisite good character, honesty and integrity for licensure.

C. If there is a statutory disqualifier, whether the Commission should exercise its discretionary power and grant a license pursuant to N.J.S.A. 5:12-92d.

The hearing took place on August 7, 1990, at the Pleasantville Police Building in Pleasantville, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** the facts in this matter are not in dispute.

In 1979, Mr. Thompson with several other people established the United Minority Construction Company (UMCC) to do general construction work in the Atlantic City area. This was Mr. Thompson's first business enterprise. As the business increased, Mr. Thompson bought out the interests of the other stockholders of UMCC. This company had unionized minority employees and was able to get a substantial amount of business from the casino industry. The company grew rapidly and in one year its business expanded from $300,000 to $5,000,000. The number of people employed by the company varied, and at one time it had 126 employees.

Mr. Thompson now recognizes that UMCC undertook too many projects at one time, grew too rapidly and had a substantial cash flow problem. In addition to its internal problems, UMCC lost $100,000 on one project undertaken for the Sands Hotel, Casino and Country Club (Sands). As to this project, UMCC acted as a sub-contractor and there was a cost dispute between the Sands and the general contractor. Although UMCC completed its job for the Sands and the Sands indicated its satisfaction with UMCC's work, the Sands refused to pay UMCC the remaining

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$100,000 for the job since it alleged that it had paid this amount to the general contractor. The general contractor denied receiving this amount from the Sands for work performed by UMCC. There was litigation between the Sands and the general contractor, and after the litigation, UMCC did not get any additional monies. Because of its financial difficulties, UMCC declared bankruptcy in 1984 and the company was dissolved. Mr. Thompson lost his entire investment. Because of his financial difficulties, Mr. Thompson had domestic problems and his first marriage ended in a divorce.

According to Mr. Thompson, because of UMCC's cash flow problem and the loss of money from the Sands project, UMCC found it difficult to get enough money to meet its payroll obligations and it did not have enough money to pay the withholding payments to the IRS. Mr. Thompson stated that the company filed the required IRS reports and notified the IRS regarding its financial problems. In 1987, the IRS filed two tax liens against Mr. Thompson; one lien is for $6,409.22 (R-1), and the other lien is for $315,598.60 (R-2).

Thereafter, Mr. Thompson met with representatives of the IRS and presented information regarding his financial situation (R-4). In June 1987, IRS agreed to allow Mr. Thompson to pay the debt in installment payments (R-3, R-5, R-6), waived payments for the first year and required Mr. Thompson to make a payment of $50.00 a month. After Mr. Thompson's financial position improved in 1988, the amount of the payments was raised to $550.00 a month (R-3). Mr. Thompson has paid in full the first lien. Mr. Thompson is still making installment payments as to the second lien, and he is current as to these payments.

In 1985, Mr. Thompson started a new company called NCC to do construction work in the Atlantic City area, including work for the casino industry. Mr. Thompson is the president of NCC and owns 51 percent of its stock. According to Mr Thompson, there is a substantial difference in the way he operates NCC as compared with UMCC. First of all, Mr. Thompson recognized that he had problems handling the financial matters for UMCC. The financial matters for NCC are handled by Robert Polisano. Mr. Polisano is the vice president of NCC and he owns 48 percent of its stock. Mr. Polisano has twenty years of experience in the construction industry and he owns his own construction company which is licensed by the Commission. Mr Polisano holds a degree in accounting, and for a while he was employed by the IRS Both Mr. Thompson and Mr. Polisano stated that it is Mr. Polisano's responsibility to oversee all the financial activities of NCC and he reviews all new projects from a

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financial standpoint. Mr. Thompson stated that he is now selective and he does not accept all the contracts offered to NCC. According to Mr. Thompson, the Sands has requested him to undertake new projects and he has refused because of his prior experience with the Sands. In addition, Mr. Thompson stated that he was offered a contract by Trumps Taj Mahal Hotel and Casino and refused it because he had a "gut feeling" that this casino might have financial difficulties in the future. According to Mr. Thompson, he is anxious to obtain the casino service industry license since presently 60 percent of the work done by NCC is for the casino industry.

Mr. Thompson is now 44 years old. He is a high school graduate and has taken additional courses at the Atlantic City Vocational School. Mr. Thompson is a trained carpenter. Mr. Thompson does not have a criminal record. According to Mr. Thompson, he was born and raised in the Atlantic City area and has lived in this area for a substantial period of time. Mr. Thompson does volunteer work for the Police Athletic League and the local boys' club, and he makes donations to various civic projects. Mr. Thompson has remarried. He is now a deacon for the Calvary Baptist Church in Philadelphia, Pennsylvania, and he is active in church affairs.

Mr. Polisano stated that he has known Mr. Thompson since 1983 and was aware of his financial problems when he was president of UMCC. According to Mr. Polisano, what happened to UMCC could happen to any small corporation which is dependent on the good faith of the people it works for. Mr. Polisano stated that Mr. Thompson's activities with UMCC should not be held against him, and that Mr. Thompson is a person of good character, honesty and integrity.

On behalf of Mr. Thompson, several persons submitted letters attesting to his good character, honesty and integrity. Stanley M. Berk of Soltz Paint Company indicated that he has personally known Mr. Thompson for many years, that he considers him to be a good friend, and that the company has had business dealings with Mr. Thompson for some years and considers him to be a valuable customer (P-1). Norman Hill, Director of the Atlantic County Department of Administrative Services, stated he has known Mr. Thompson for many years and that Mr. Thompson is a "hard working, dedicated, honest individual" who wants the "opportunity to prove he is qualified and capable to efficiently complete any task" (P-2). Robert S. Tyner, Traffic Analyst for the Atlantic County Department of Regional Planning and Development, stated that he has known Mr. Thompson for approximately twenty years and that he considers him to be a good person who is a supporter of many civic

projects in the Atlantic City area (P-3). Lastly, Edyth V. Sluby, a personal friend of Mr. Thompson, stated that he is an honest, upright and good person (P-4).

CONCLUSIONS OF LAW

In closing, Deputy Attorney General McDonough stated that the Division has taken no position regarding the petitioners' application for a casino service industry license. Mr. McDonough stated that Mr. Thompson's failure on behalf of UMCC, to make the required payments to the IRS could be considered a criminal offense analogous to N.J.S.A. 2C:20-9, theft by failure to make required disposition of property received, and/or N.J.S.A. 2C:21-15, misapplication of entrusted property and property of government or financial institution. If Mr. Thompson's conduct is determined to be a criminal offense, based on the amount of money involved, it would constitute a crime of the third degree, which is an automatic disqualifier pursuant to N.J.S.A. 5:12-86c(1). Deputy Attorney General McDonough recognized that even if the conduct was deemed to be a criminal offense, the Commission has the discretion to permit licensure pursuant to N.J.S.A. 5:12-92d. Lastly, Mr. McDonough noted that in order to qualify for licensure the petitioners must show by clear and convincing evidence good character, honesty and integrity. Mr. McDonough stated that Mr. Thompson's failure to make the IRS payments was a factor to be considered in determining his good character, honesty and integrity.

In his closing remarks, Mr. Thompson stated that he did not intend to defraud the IRS and emphasized that even though he could not make the payments he did file the required reports with the IRS, which established his debt. Mr. Thompson indicated that he is now paying off this debt and that he has taken precautions with his new corporation to avoid the apparent mistakes of the past.

Based on the facts, I **CONCLUDE** that Mr. Thompson's action in failing to make the withholding payments was not a criminal offense, analogous to either a N.J.S.A. 2C:20-9 or 2C:21-15 violation. These two criminal statutes provide:

> 2C:20-9. Theft by failure to make required disposition of property received
>
> A person who purposely obtains or retains property upon agreement or subject to a known legal obligation to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to

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identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition. [emphasis added]

2C:21-15. Misapplication of entrusted property and property of government or financial institution

A person commits a crime if he applies or disposes of property that has been entrusted to him as a fiduciary, or property belonging to or required to be withheld for the benefit of the government or of a financial institution in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted whether or not the actor has derived a pecuniary benefit. "Fiduciary" includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary. [emphasis added.]

Both of these statutes deal with the misapplication of funds. In this matter, Mr. Thompson did not misapply funds; rather, he did not have adequate funds from UMCC's business to make the withholding payments to the IRS. Additionally, there was no criminal intent. Mr. Thompson filed the required reports and there was no evidence presented to show that he tried to steal, deceive, defraud, misinform or deny his financial responsibility to the IRS.

The second issue is whether Mr. Thompson's failure to make the IRS payments has had a negative effect on his good character, honesty and integrity. Obviously, the nonpayment of debts owed to the IRS cannot be condoned; however, Mr. Thompson freely admitted he owed the money and is now paying the debt. Mr. Thompson candidly admitted the problems he had while he was president of UMCC and the steps he has taken to avoid such problems with NCC. Except for this debt, the Division's investigation of Mr. Thompson has not disclosed any other derogatory information about him.

Based on Mr. Thompson's testimony as well as the testimony of Mr. Polisano and the contents of the letters presented at the hearing, I **CONCLUDE** that Mr. Thompson has shown that he is a person of good character, honesty and integrity.

It has been established that the character and responsibility of a company can be judged by the character and responsibility of its owners, officers, directors and principal employees, Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471 (1971), cert. den., 405 U.S. 1065 (1972). In view of my conclusion as to Mr. Thompson's good character, honesty and integrity, and since no negative information has been presented

regarding Mr. Polisano or anyone else associated with NCC, I **CONCLUDE** that NCC has shown its good character, honesty and integrity.

Therefore, I **ORDER** that the application of the petitioners for a casino service industry license be approved.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 20, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

9/21/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 25 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

cad

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EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioners:

P-1 Letter from Stanley M. Berk, dated July 9, 1990

P-2 Letter from Norman Hill, dated June 25, 1990

P-3 Letter from Robert S. Tyner

P-4 Letter from Edyth V. Sluby

For the Respondent;

R-1 Notice of Federal Tax Lien Under Internal Revenue Laws, Serial No. 0534-353-87

R-2 Notice of Federal Tax Lien Under Internal Revenue Laws, Serial No. 0534-071-87

R-3 Installment Agreement between Ricardo Thompson and the Internal Revenue Service, dated June 12, 1987

R-4 Internal Revenue Service Collection Information Statement for Individuals

R-5 Internal Revenue Service Tax Collection Waiver, dated June 12, 1987

R-6 Internal Revenue Service Tax Collection Waiver, dated June 19, 1987

WITNESSES:

For the Petitioners:

Ricardo Thompson
Robert Polisano

For the Respondent:

None

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-218
REGISTRATION NO. 080473-40
OAL DOCKET NO. CCC 04400-89
(CCC 01279-89 ON REMAND)
ORDER NO. 90-41-11

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

Complainant,

v.

RAUL NIEVES,

Respondent.

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; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 17, 1990,

IT IS on this 8th of November 1990, ORDERED that the initial decision is rejected; and

IT IS FURTHER ORDERED that Raul Nieves is found to have established his rehabilitation for the reasons stated on the record; and

IT IS FURTHER ORDERED that Raul Nieves is permitted to retain his casino employee license.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 4400-89
(ON REMAND CCC 1279-89)
AGENCY DKT. NO. 89-218

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RAUL NIEVES,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Raul Nieves, respondent, pro se

Record Closed: December 19, 1989 Decided: September 6, 1990

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 18, 1989, seeking revocation of the respondent's casino hotel employee registration, based upon the respondent's alleged conviction for possession of a controlled dangerous substance with intent to distribute on July 17, 1987, contrary to N.J.S.A. 2C:35-5.

These are the issues:

1. Has the respondent been convicted of possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 2C:35-5-5, which would be an automatic disqualifier from licensure, pursuant to sections 86c(1) and 91b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

2. Has the respondent, if he has been convicted of an otherwise disqualifying offense, affirmatively established his rehabilitation by clear and convincing evidence, pursuant to section 91d of the Act.

PROCEDURAL HISTORY

On February 9, 1989, the Casino Control Commission received the respondent's request for a hearing concerning the Division's complaint. On February 22, 1989, the Commission transmitted this 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 respondent failed to participate in a prehearing conference scheduled for May 1, 1989. Administrative Law Judge Richard J. Murphy issued an initial decision on May 16, 1989, which concluded that the respondent did not seek to defend the matter.

The respondent appeared at the Commission's public meeting of June 7, 1989, to request another opportunity for a hearing. The Commission granted the request and on June 12, 1989, ordered that the complaint be remanded to the Office of Administrative Law for a hearing on all issues. The matter was retransmitted to the Office of Administrative Law on June 15, 1989. A prehearing conference was held on August 21, 1989, and the hearing was then held as scheduled in Atlantic City, New Jersey, on December 19, 1989. The record closed on that date. Issuance of this initial decision was delayed because of my heavy caseload, exacerbated by illness requiring my absence from the Office for an extended period.

FINDINGS OF FACT

The material facts in this matter are essentially undisputed. The respondent is a 22-year-old resident of Atlantic City, New Jersey. He has lived in Atlantic City nearly his entire life. The respondent holds casino hotel employee registration number 80473-40.

The respondent testified that he left school in the ninth grade. He had no particular reason to quit; he simply wanted to hang out and party with his friends. At the time of the hearing, the respondent had been working at Bally's Casino as a bus person for about ten months. He stated that he likes this job and he would like to be able to keep it. His fellow employees are friendly and seem to be concerned about each other. According to the respondent, he lives with his parents and pays them room and board.

On or about March 24, 1987, the respondent was arrested in Atlantic City and charged with possession of a controlled dangerous substance and possession of a controlled dangerous substance with intent to distribute, contrary to N.J.S.A. 24:21-20a(1) and 24:21-19a(1). The charge of possession with intent to distribute is comparable to N.J.S.A. 2C:35-5, which is a disqualifier under section 86c(1) of the Casino Control Act. In April 1987, the respondent was indicted on the foregoing charges, as well as on a charge of conspiracy, contrary to N.J.S.A. 24:21-24.

On June 19, 1987, the respondent retracted a plea of not guilty and entered a plea of guilty to possession of CDS with intent to distribute (Exhibit P-2). On July 17, 1987, he was sentenced to probation for two years and ordered to pay $30 to the Violent Crimes Compensation Board. The remaining counts of the indictment were dismissed. According to Honorable Manuel H. Greenberg, J.S.C., the sentenced imposed "is in accordance with the plea agreement which is deemed to be in the interest of justice under all the circumstances."

Testifying about the 1987 conviction, the respondent stated that his friend Sonia had been selling some drugs and he was with her. He was just "hanging out with her," but he did know that she was selling drugs. According to the respondent, it was heroin that was being sold. He does not know why the indictment said that the drug was cocaine.

The respondent candidly acknowledged that he was a heroin user at the time of his arrest in 1987 and that he was addicted. He acknowledged that he was arrested in August 1989 by the Drug Enforcement Administration and the Atlantic City Police Department and was charged with simple possession of heroin. On December 15, 1989, he pled guilty to that charge and was sentenced to serve 30 days in county jail. The respondent stated that he was given permission to serve his jail sentence on his days off

from work. The arrest occurred when the police found a $10 bag of heroin under a seat of the car in which the respondent was riding, and all of the passengers were charged. The respondent was advised by his public defender to plead guilty to the possession charge to avoid the risk of a lengthy jail sentence.

The respondent testified credibly at the hearing that he had not used heroin for many months. He had voluntarily decreased his illegal drug usage and then had been able to stop by entering a methadone program. He receives this medication every day and he sees a counselor twice a month. He also provides urine samples twice a month, and these have been clean. He was on this methadone program at the time of his second arrest in August 1989.

The respondent works the 7:00 a.m. to 3:00 p.m. shift at Bally's. He has received only minor written warnings from his supervisors. According to the respondent, he does not participate in any community activities. He also has not attended any training programs since his 1987 conviction. He goes to work and he goes out with his girlfriend. Significantly, the respondent stated that he no longer hangs out with the crowd that seemed to involve him in drug related activities. He recognizes that he made a mistake and he feels that he has paid the consequences.

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 licensee or registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. Section 129(1) of the Act authorizes the revocation of registration of any person for the conviction or commission of any offense or violation under the Act which would disqualify such person from holding his credential.

Pursuant to sections 91b and 86c(1) of the Act, the Commission may revoke the credential of any registrant who has been convicted of certain offenses, including possession of a controlled dangerous substance with intent to distribute, comparable to N.J.S.A. 2C:35-5. It is undisputed that the respondent pled guilty to one count of possession of a controlled dangerous substance with intent to distribute on June 19, 1987. Therefore, I **CONCLUDE** that the respondent is subject to revocation of his casino hotel employee registration, pursuant to section 86c(1) of the Casino Control Act.

Section 91d of the Act provides that a registration shall not be revoked on the basis of otherwise disqualifying conduct, provided that the registrant has affirmatively demonstrated his rehabilitation by clear and convincing evidence. In determined whether rehabilitation has been affirmatively demonstrated, the following eight factors should be considered: the nature and duties of the position involved; the nature and seriousness of the conduct; the circumstances under which it occurred; the date of the conduct and the actor's age when it was committed; whether the offense was isolated or repeated; social conditions contributing to the conduct; and any evidence of rehabilitation following the conduct.

The respondent is now 22 years old. His two drug related offenses occurred in 1987 and, most recently, in August 1989. Following completion of the respondent's sentence of 30 days in the county jail, served on weekends, he was to be placed on probation.

The respondent's offenses occurred in large measure as a result of his immaturity and poor choice of friends. His testimony at the hearing did not produce any impression that he felt he had been involved in any serious misconduct.

The respondent has been working in the casino industry as a bus person with only minor difficulty. He is actively involved in a methadone maintenance program and is subject to providing urine samples twice a month. He also receives counselling.

The respondent acknowledges that his involvement with illegal drugs has been a mistake. However, too little time has passed since his unlawful conduct (his last arrest

was August 1989) to be assured that he will continue to refrain from drug usage. In light of all of the circumstances expressed above, I **CONCLUDE** that the respondent has not established his rehabilitation by clear and convincing evidence, within the meaning of section 91d of the Casino Control Act. Although not specifically identified as an issue in this proceeding, I further **CONCLUDE** that the facts in this matter do not warrant a finding that the interests of justice require waiver of any disqualification criterion, pursuant to section 91e of the Act. Therefore, I **CONCLUDE** that the respondent's casino hotel employee registration should be revoked.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of Raul Nieves be **REVOKED.**

This recommended decision may be adopted, 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 6, 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

9/7/90
DATE

Kim Block
CASINO CONTROL COMMISSION

SEP 17

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Indictment
P-2 Judgment of conviction

For the respondent:

None

WITNESSES

For the petitioner:

Raul Nieves

For the respondent:

Raul Nieves

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-262
LICENSE NO. 074211-21
OAL DOCKET NO. CCC 01657-90
ORDER NO. 90-46-8

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

Complainant,

v.

MARGARET L. OLSSON

Respondent.

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 November 21, 1990,

IT IS on this 10th day of December 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the Margaret L. Olsson's casino employee license is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Margaret L. Olsson 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.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1657-90
AGENCY DKT. NO. 90-262

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
MARGARET L. OLSSON,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for the petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Anthony M. Bezich, Esq., for the respondent

Record Closed: September 24, 1990 Decided: October 10, 1990

BEFORE **STEVEN L. CARNES,** ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Margaret L. Olsson's casino employee license no. 74211-21, pursuant to N.J.S.A. 5:12-90 and N.J.S.A. 5:12-129(a). The Division sought revocation of the respondent's license by reason of its contention that the respondent had committed a criminal offense which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c, by means of section 86g, and therefore,

she lacks the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

The respondent had obtained a casino employee license from the Commission so she could be employed as a slot cashier at the Trump Castle Hotel and Casino. By complaint to the Commission, filed January 11, 1990, the Division objected to the respondent's continued licensure, asserting that the respondent had committed the offense of theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, which is a disqualifying offense under section 86c(2), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89b(2). Based upon the complaint, the Commission notified the respondent on January 17, 1990, that she had the right to a hearing, and that failure to respond within 15 days could result in her license being revoked. By application dated January 26, 1990, which was received by the Commission on January 29, 1990, the respondent requested a hearing. On February 23, 1990, the Commission transmitted the matter to the Office of Administrative Law, which received it on March 5, 1990, 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 in the matter was held before me on May 24, 1990. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because she is alleged to have committed a violation of N.J.S.A. 2C:20-3, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

B. Whether respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

A hearing was held on September 24, 1990, in the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On November 21, 1989, the respondent, Margaret L. Olsson, was employed as a slot cashier at the Trump Castle Hotel and Casino. She was assigned to change booth 16 right. At 02:02, video tape surveillance of the respondent in her work station began. At 02:03, the respondent removed four bills (paper money) from various slots in her cash drawer and placed the bills in the far left slot of her cash drawer. The respondent removed one twenty dollar bill, one ten dollar bill and two five dollar bills. At 02:05, the respondent removed the four bills from her cash drawer, folded them in half, and placed them under a tissue box on her front counter. At 02:06, the respondent removed the four bills from under the tissue box, individually folded each bill into fourths, and placed the bills into her tip box located in the back of the change booth. [P-1 & P-2]

At 03:12, the respondent took a $1 token from the side counter and placed it on the front counter. At 03:14, the respondent obtained a one dollar bill and appeared to change it for the token. The respondent then placed the one dollar bill into her tip box. [P-1 & P-2]

Trump Castle security then contacted State Police Detective Garabics who responded and reviewed the video tape. At 03:29, Detective Garabics, slot coin cashier supervisor Schneller and security shift manager Williams entered change booth 16 right, confronted the respondent, and removed the money from her tip box. At 03:34, the audit was conducted of the respondent's cash drawer. At 03:52, an audit was completed revealing a $40 shortage in the respondent's cash drawer. [P-2]

The respondent was arrested by Detective Garabics and was charged with theft by unlawful taking in violation of N.J.S.A. 2C:20-3 (P-3 & P-4). The respondent told Detective Garabics that she had taken the money to pay for Christmas gifts (P-3). Detective Garabics then returned the $41 to change booth 16 right. On January 30, 1990, the respondent was found not guilty of the theft in Atlantic City Municipal Court; however, the video tape was not introduced into evidence and the municipal court judge apparently believed that by placing money into a cage cashier's tip box that the tips would be divided by other cage cashiers when in fact it was an individual tip box (R-1).

FINDINGS OF FACT

As the above facts are not disputed, I **FIND** all of the above as **FACT**.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> . . . .
>
> (2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing;
>
> . . . .
>
> g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> ....
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

> a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
>
> b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional

residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

e. 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.

. . . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." N.J.S.A. 5:12-129(1) provides for the revocation of 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, by means of section 86g, that the respondent committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, which constitutes a violation of N.J.S.A. 5:12-86c, and that, accordingly, she is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g

Section 86g provides that a licensee or registrant will be disqualified fROm licensure and registration because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(2) 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, 10 N.J.A.R. 244 (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 :

> 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. [at 254]

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 by the State of casino activities depends upon the confidence of the public "in the credibility and

integrity of the regulatory process and of casino operations," 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 in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(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."

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif, den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that while the respondent's conduct resulted in a disorderly persons theft offense which is not listed as a disqualifier under section 86c, the respondent's conduct constituted a theft from the casino entity. Such conduct strikes directy at the public confidence and trust in the credibility and integrity of the regulatory process. As such the Division asserts that this alleged offense is a disqualifying offense under section 86c(2) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State or that she was found not guilty in municipal court.

N.J.S.A. 2C:20-3, Theft by unlawful taking or disposition, provides in pertinent part:

> a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

In this case, the respondent's removal of $40 from her cash drawer and $1 in tokens from her side counter and eventually placing the $41 into her individual tip box so she could purchase Christmas presents constituted a theft from Trump Castle. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-3. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(3), the offense constitutes a disorderly persons offense.

In State of New Jersey, Dept. of Law and Public Safety, Division of Gaming Enforcement v. Michael P. Waters, OAL DKT. NO. CCC 3933-86, decided by the Commission (June 12, 1987), the Commission stated at 2-3 that:

> A distinction must be drawn between the rehabilitation from a section 86(c)(1) or (3) disqualifying offense pursuant to sections 90(h) or 91(d) of the Act and rehabilitation as an aspect of the inimical analysis. In the former situation, disqualification is established once it is shown that the respondent committed an enumerated offense. The respondent is then afforded the opportunity to affirmatively demonstrate his rehabilitation from that disqualification. It is well established that, consistent with other affirmative licensing criteria, the respondent must prove his rehabilitation by clear and convincing evidence. Application of Richard Romanishin for a Casino Employee License, Docket No. 84-EA-85 (Commission order, May 23, 1985); Application of Chester R. Brathwaite for a Casino Employee License, Docket No. A-4252-82T3 (Unpublished opinion reversing Commission decision, January 23, 1984).
>
> However, unlike a section 86(c)(1) or (3) situation, disqualification pursuant to section 86(c)(4) is not established upon demonstrating that the respondent committed the offense in question. Such a determination can only be made after considering all the circumstances surrounding the offense: its nature, its remoteness, and the offender's conduct subsequent to the offense, i.e., essentially the same factors which bear upon rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Commission decision, December 27, 1985); State v. Theodore Williams, Docket No. 84-288 (Commission order, May 1, 1987).

The Commission concluded that if the Division establishes a case for the respondent's disqualification, it is "then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof), had shifted."

In the Davis case, the Commission stated at 313-314:

> Rehabilitation under section 90(h) (casino employee license) and section 91(d) (casino hotel employee registration) does not apply to

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> disqualifying convictions under section 86(c)(4). By their express terms, these rehabilitation 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.

The Commission indicated that "it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis [citation omitted] (and) . . . the inimical analysis is substantially similar to the concept of rehabilitation." The Commission concluded that:

> 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 or rehabilitation after concluding that a given offense is inimical pursuant to section 86(c)(4). [Id. at 314] [footnote omitted]

The eighth specific criteria enumerated in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d to be evaluated when a determination of rehabilitation is to be made are:

1. The nature and duties of the licensee's position or 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 licensee or registration 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 or persons who have or have had the applicant or registrant under their supervision.

In regard to the first criterion, Ms. Olsson is a casino licensee and was employed as a slot cashier. As such, she had direct responsibilities for maintaining a bank and making change for actual gaming activities and came in contact with casino patrons.

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Second, the respondent committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking or disposition, on one occasion while employed in the casino industry. Because the offense involves a theft from the casino employer, it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The respondent was assigned as a slot cashier responsible for maintaining a bank and making correct change for casino patrons. This is a position of trust. The respondent violated this trust by stealing money from the casino cash drawer and placing it in her individual tip box. Such a theft cannot be tolerated in the casino industry.

Fourth, the respondent's misconduct occurred in November 1989, when it ceased.

Fifth, the respondent was 26 years old at the time of the offense. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was isolated in nature. She has not committed any other violations of the criminal laws.

Seventh, there were no social conditions presented in evidence which may have contributed to the offense.

Eighth, the respondent is single and has been steadily employed as a bus driver by National School Bus Company ever since she was terminated from the casino industry. The respondent presented no other evidence of her rehabilitation.

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(2), by means of section 86g.

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Olsson was required to establish, by clear and convincing evidence, her good character, honesty and integrity. In the Matter of the Application of Resorts International

Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

The respondent presented virtually no evidence that she is a person of good character, honesty and integrity other than the fact that this is her first criminal offense and that she has been continuously employed since she was terminated from the casino industry. As such, I cannot state that it is readily apparent that the respondent's misconduct was aberrant and that she is otherwise a person of good character, honesty and integrity. The misconduct did involve her licensed employment, and the underlying circumstances do not mitigate the seriousness of the misconduct. Accordingly, I cannot state that the respondent presents no risk to the public nor to the integrity of the gaming industry in this State. The respondent has not earned the privilege of licensure. An examination of the whole person does not clearly and convincingly establish that Ms. Olsson is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** and that license no. 74211-21 be revoked.

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This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 10, 1990
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

10-11-90
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 15 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

cad

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Video tape, dated November 20/21, 1989

P-2 Trump Castle Hotel and Casino Surveillance Incident Report, dated November 20/21, 1989

P-3 New Jersey State Police Investigation Report, dated November 21, 1989

P-4 Atlantic City Municipal Court Complaint, dated November 21, 1989

For the Respondent:

R-1 Atlantic City Municipal Court transcript, re: State v. Olsson

WITNESSES

For the Petitioner:

None

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-109(B)
LICENSE NO. 48123-21
OAL DOCKET NO. CCC 05778-88
ORDER NO. 90-46-9

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

Complainant,

v.

DAVID OSLIN,

Respondent.

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; and the Commission having considered the entire record of these proceedings at its public meeting of November 21, 1990,

IT IS on this 3rd day of December 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5778-88

AGENCY DKT. NO. 88-109B

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

DAVID OSLIN,

Respondent.

Katherine A. Smith, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

John Tomasello, Esq., for respondent (Tomasello, Driscoll, Rozanski & DeSimone, attorneys)

Record Closed: April 27, 1990 Decided: September 27, 1990

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 October 15, 1987. The respondent was employed as a security officer at Caesar's Casino Hotel. The complaint charges that he permitted an underage person to enter into and remain in the casino at Caesar's, in violation of section 119b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). These are the issues identified during a prehearing conference conducted by Administrative Law Judge Steven W. Thompson on April 6, 1989:

1. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have committed a violation of N.J.S.A. 5:12-119b, despite the fact that such acts were not prosecuted in the courts of this state, as permitted by N.J.S.A. 5:12-86g.

2. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

At the conclusion of the evidentiary hearing in this matter, the Division of Gaming Enforcement argued that a one-year suspension of the respondent's casino employee license would be the appropriate sanction if the respondent were found to have violated section 119b of the Act. The significance of this assertion is that the Division did not contend that such a violation would render the respondent's continued licensure as a casino employee inimical to the policy of the Casino Control Act, within the intent of section 86c(2) of the Act. It also meant that any adverse impact such a violation would have on the respondent's good character, honesty and integrity would not be so great as to require the respondent's disqualification pursuant to sections 86a, 89b(2) and 90b of the Act. Thus, the actual issues in this matter may be stated as follows:

Has the respondent violated N.J.S.A. 5:12-119b, and if so, what sanctions permitted under section 129 of the Act should be imposed?

PROCEDURAL HISTORY

On November 4, 1987, the respondent filed his request for a hearing with the Casino Control Commission. The Commission transmitted this matter to the Office of Administrative Law on August 4, 1988, for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. Administrative Law Judge Steven W. Thompson conducted a prehearing conference in this matter on April 6, 1989.

This matter was reassigned and the hearing sessions were held in Atlantic City, New Jersey, on September 18 and 20, 1989. Counsel for the respondent subsequently sought permission to obtain additional information concerning the post-hearing conduct of Debra Kim Cohen, one of the Division's witnesses. On April 27, 1990, the Division filed its written objection to the respondent's request. I considered the parties' arguments and determined that the post-hearing conduct of Cohen could not have sufficient impact on the resolution of this matter as to warrant keeping the evidential record open. Issuance of this initial decision was delayed because of my heavy caseload, exacerbated by illness requiring my absence from the office for an extended period.

FINDINGS OF FACT

Many of the material facts in this matter are undisputed. The respondent holds casino employee license number 48123-21. He was employed as a security guard at Caesar's Casino Hotel from June 1983 until May 1988. According to the respondent, he left his employment at Caesar's when he was offered a better position with the United States Post Office in Wildwood, New Jersey.

While employed as a security guard, the respondent's duties included securing the casino area and being on the lookout for suspicious persons. One of the main security functions was keeping underage persons out of the casino. According to the respondent, his post would vary. He would be assigned either to an entrance to the casino or to roving duty throughout the casino. The respondent testified that he received about one week of on-the-job training at Caesar's.

Caesar's security manager Michael Timberlake testified at the hearing that the respondent was one of the security officers who served under him and he observed the respondent daily on the 3:00 to 11:00 p.m. shift. He described the respondent as a very good security officer who was both very intellegent and very honest. Mr. Timberlake had never received any complaints about the respondent, either from fellow employees or from patrons. He said that Caesar's would hire the respondent back if he wished to return.

Several other witnesses testified on behalf of the respondent. All described him as trustworthy and honest. These witnesses also agreed that the respondent is hard working and forthright.

Division of Gaming Enforcement Agent John McLaughlin testified at the hearing that he was assigned in 1987 to investigate underage gambling in Atlantic City casinos by Debra Kim Cohen, who was born February 8, 1969. Agent McLaughlin's investigation reports were admitted into evidence as Exhibits P-1 and P-2. It is undisputed that Ms. Cohen patronized many Atlantic City casinos on numerous occasions in 1986. She gambled sufficiently to be rated in many of the casinos and she was frequently rated and received complimentary services at Caesar's. Floor person's rating cards reflecting Ms. Cohen's gambling at Caesar's were admitted into evidence as Exhibits P-4 through P-12.

It is undisputed that Ms. Cohen was arrested at more than one casino and that she was charged with several counts of underage gambling. At some casinos, Ms. Cohen had misidentified herself as Diane Norcia to facilitate her underage gambling. Ms. Cohen testified at the hearing that when she went to court on the charges, she received a sentence of one year probation and a fine. For a while, she was under psychiatric care for depression and compulsive gambling. Ms. Cohen acknowledged that some of the money which she used to gamble she had stolen from her father. On June 1, 1988, Ms. Cohen received a grant of immunity from the Commission.

Agent McLaughlin testified that he interviewed Ms. Cohen as part of his investigation. She told him that a security guard at Caesar's named David knew that she was underage. The agent obtained five photographs of security guards from Caesar's and Ms. Cohen identified the photo of the respondent. When Agent McLaughlin interviewed the respondent, he showed the respondent a photo of Ms. Cohen. The respondent recognized Ms. Cohen and told the agent that he had seen her at the Boardwalk entrance to the casino and had conversed with her. He told the agent that Ms. Cohen did not go into the casino.

Both Ms. Cohen and the respondent testified that their first encounter at Caesar's occurred at the Boardwalk entrance to the casino, in late summer or early fall 1986. The respondent was on duty with Security Officer Mark Levin. According to Ms. Cohen, she had a friendly conversation with the respondent. They talked a little about gambling and she asked him to guess her age. She told him that she was 17 and she also showed the respondent her Atlantic City high school photo identification.

The respondent testified that he first noticed Ms. Cohen in the lobby area between the casino floor doors and the doors to the boardwalk. She was heading up the escalator to the second floor and Mark Levin said something to him about guessing her age. According to the respondent, Ms. Cohen came back to his area about 10 minutes later and approached him. They had a general conversation and the subject of her age came up. The respondent believes that Ms. Cohen asked him how old he thought she was, and he guessed about 17. Ms. Cohen told him that he was right and showed him some form of identification. The respondent testified sincerely that Ms. Cohen appeared to him to be underage.

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

The central factual dispute in this matter concerns whether the respondent allowed Ms. Cohen to walk into the casino after their first meeting, when he had learned that she was only 17 years old. Ms. Cohen testified that she talked with the respondent for about one half hour. She then walked past the respondent straight onto the casino floor and gambled for about two hours. Ms. Cohen acknowledged that it was odd to have been let into the casino after she had revealed her age.

The respondent testified emphatically that he did not allow Ms. Cohen to enter the casino at the time of their first meeting or at any time thereafter. In fact, he once saw her on the floor of the casino at a later date and he helped Sergeant McCall escort Ms. Cohen out of the casino. Significantly, when Agent McLaughlin interviewed Sergeant McCall on March 12, 1987, she told the agent that the security officer with her when Ms. Cohen was seen on the casino floor could have been the respondent (Exhibit P-2).

Mark Levin testified at the hearing about the first encounter with Ms. Cohen. He confirmed that she first went up the escalator to the second floor. When she returned a few minutes later, Ms. Cohen and the respondent conversed. The respondent had guessed that she was about 16 or 17 years old and Ms. Cohen had produced her identification card. Because she was underage, the security officers would not let her into the casino. She was told that she could either go upstairs to the shops or out the door, but she would not be allowed on the casino floor. Mr. Levin testified in a very sincere and straightforward manner.

Did the respondent allow Debra Kim Cohen to enter the casino floor even though he knew that she was underage? Resolution of this factual dispute depends upon credibility determinations. A trier of fact may reject testimony because it is inherently incredible or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). The respondent's testimony was sincere and straightforward; it sounded a strong ring of truth. The respondent's testimony was corroborated by the believable testimony of Mr. Levin.

In contrast, the testimony of Ms. Cohen must be viewed with caution. She had misrepresented her age to the licensed casinos. She had used a false name in some of the casinos. Ms. Cohen had also obtained some of the money which she gambled by stealing it from her father.

Ms. Cohen's bias against the licensed casinos and casino employees was apparent. She stated that she had no hesitation revealing the names of any casino employees involved in her gambling activities. However, she also acknowledged that she would refuse even a judge's order to reveal the names of other underage persons who had gambled in the casinos. This bias provides further reason to view Ms. Cohen's testimony with caution. While the respondent's testimony was entirely credible, I simply do not believe Ms. Cohen's testimony that the respondent allowed her to walk into the casino after she revealed to him that she was underage. Thus, I further find as fact that the respondent did not allow Ms. Cohen to enter into and remain in a licensed casino.

CONCLUSIONS OF LAW

Section 119b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), provides in part:

> Any licensee or employee of a casino who allows a person under the age at which a person is authorized to purchase and consume alcoholic beverages to remain in a casino is a disorderly person. . . .

I have found that the respondent did not permit an underage person to enter into and remain in a licensed casino. Accordingly, I **CONCLUDE** that the respondent has not violated section 119b of the Casino Control Act. Therefore, I further **CONCLUDE** that the complaint of 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 David Oslin be **DISMISSED.**

This recommended decision may be adopted, 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 27, 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

9/28/90
DATE

Kim Ward
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 2 1990
DATE

James LaVecchia
OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For the petitioner:

P-1	Investigation report of Agent McLaughlin
P-2	Supplemental investigation report
P-3	Photo of Debra Kim Cohen
P-4 through P-12	Caesar's floor person's rating slips
P-13	Not in evidence
P-14	Report of Detective DiGiuseppe
P-15	Sworn statement of Debra Kim Cohen
P-16	Partial deposition of Debra Kim Cohen
P-17	Photo flyer
P-18	Report of Mark Levin

For the respondent:

R-1	Letter dated September 5, 1989

WITNESSES

For the petitioner:

John McLaughlin
Debra Kim Cohen

For the respondent:

David Oslin
Mark Levin
Michael Timberlake
Joseph Wilson
Michael Brueck

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-212
LICENSE NO. 069763-21
REGISTRATION NO. 066338-40
OAL DOCKET NO. CCC 1278-89
ORDER NO. 90-35-4

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

Complainant,

v.

BEVERLY E. PASCAL,

Respondent.

ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of September 5, 1990,

IT IS on this 26th day of November 1990, ORDERED that the initial decision is modified as follows:

In addition to revoking the casino employee license of Beverly E. Pascal, the Commission also revokes her casino hotel employee registration.

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1278-89

AGENCY DKT. NO. 89-212

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

BEVERLY E. PASCAL,

Respondent.

James Armstrong, Deputy Attorney General, on behalf of the petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Beverly E. Pascal, respondent, pro se

Record Closed: August 25, 1989 Decided: July 2, 1990

BEFORE **RICHARD J. MURPHY,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on January 12, 1989, seeking to revoke respondent Beverly E. Pascal's casino employee license no. 69763-21 because of her conviction with theft by unlawful taking contrary to N.J.S.A. 2C:20-3, for short-changing a patron at Caesars' Boardwalk Hotel and Casino where Ms. Pascal worked as a slot booth cashier.*

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*As to the procedural history, the Commission filed this matter with the Office of Administrative Law on February 22, 1989, for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq., and a prehearing was held on May 1, 1989 with a prehearing order issued on May 23, 1989 and the plenary hearing was held on August 18, 1989 in Galloway Township, with the record closing on August 25, 1989, following the receipt of additional documentation. The due date for issuance of the initial decision was extended on several occasions for reasons unrelated to this case, including a heavy backlog of decisions resulting from a pending public utility case. I regret any hardship or inconvenience that this unavoidable delay may have caused the parties.

ISSUES

The following issues are to be resolved, as per the prehearing order:

(1) Whether the licensee is disqualified from holding a license under N.J.S.A. 5:12-86c(2), because of conviction for the offense of theft by unlawful taking, which indicates that licensure of the licensee would be inimical to the policies of the Casino Control Act and to the casino operations in the State of New Jersey.

(2) Whether the licensee can demonstrate by clear and convincing evidence that she possesses the requisite good character, honesty and integrity required by N.J.S.A. 5:12-86b(2), and 90b [including consideration of the factors of rehabilitation]

In light of the appellate division's recent decision in the matter of Dunston v. Department of Law and Public Safety, Division of Gaming Enforcement and Casino Control Commission, decided April 10, 1990, 8-197-89 T3, discussion of the good character issue will expressly address the factors of rehabilitation set forth in N.J.S.A. 5:12-90h.

FINDINGS OF FACT

There is no dispute as to the facts. On July 29, 1988, the respondent, Beverly E. Pascal, was observed by B. Carlson a member of Caesars' Surveillance Department. short changing casino patrons in her cashier booth by taking 2 $1.00 tokens off to one side and giving the patron the rest of the tokens, keeping the 2 stolen tokens under an empty bucket. She later placed the 2 $1.00 tokens in a bucket in a drawer under the counter and at the end of her shift, she was observed giving the cup to another cashier in return for $26.00 in US currency. The Division submitted a New Jersey State Police Report by Detective J. Cordy, which contained the following statement:

> [a] review of the CCTV Tape [video surveillance] coverage of the accused revealed that the accused received 2 full change buckets of tokens in $1.00 denomintations from a casino patron to be cashed in for US Currency. The accused dumped the buckets of

> tokens onto a tray to be pushed through the counter; at which time, she guided two tokens off to one side and covered them with empty change buckets. After paying the customer, the accused took the (2) $1.00 tokens and placed them inside a bucket in a drawer under the counter. At the end of the shift, the accused was observed giving the cup to another cashier and in return she received $26.00 in US Currency.
>
> Interviewed Coin Cage Shift Supervisor, R. Bartholomew, who advised that standard procedures for the cashiers when receiving a tip from a patron, is to advise the head cashier, and show the camera the tip. On July 29, 1989, the accused had no reports of tips, during her shift.
>
> The accused was escorted to the DGE Office where she was advised that she was under arrest, read her rights as per miranda, and processed. A statement taken from the accused revealed that she has short changed patrons in the past, on this date she admitted to short-changing customers, and she did receive some tips which equals the total amount of $26.00 which is what she left with at the end of her shift. Complaints were signed and forwarded to AC Municipal Court pending a court date. (1) original CCTV Tape, and (1) copy of teh incident, depicting the accused taking (2) $1.00 tokens was received from Caesars' Surveillance Dept., and entered into evidence. (Exhibit P-1)

A summons was filed against Ms. Pascal in Atlantic City Municipal Court: she plead guilty to the charge of theft by unlawful taking and on October 26, 1988, was fined $25.00, with $25.00 in costs and $30.00 violent crimes penalty.

Ms. Pascal admitted short-changing casino customers in the past in order to break even in her cash count at the end of an evening, but denies doing so on July 29, 1988. On that occasion, she states that she received 2 $1.00 tokens as a "tip," inadvertently left by a customer, but failed to "flash" the tip or show it to the surveillance camera, which she knew might be videotaping her actions as required. Despite the fact that she claims she didn't shortchange a casino patron "that night" [July 29, 1988] she said that she plead guilty because she "wanted to get it over with" and felt that the attitude of the public defender was not helpful to her. She also states that she was not aware that her guilty plea would ultimately jeopardize her casino employee license.

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Asked of prior occasions of short changing customers, the respondent admitted that she had done so once deliberately because her count was short and she wanted to make "bank" even. This incident, which she could not date involved $2 to $3. She states that she has short-changed casino patrons 2 to 3 times by "accident," but that it is "not an everyday thing." Asked of the $26.00 in the tip bucket, she explains that she had worked a double shift of 15 to 16 hours on that busy weekend and had accumulated a number of tips.

Ms. Pascal is 24 years of age, and has no dependents.

On July 31, 1988, respondent Pascal gave the following incident report to Caesars':

> On Friday 7-29-88 two coins was left on my machine, handy wipe fell on it and covered it so I placed it in my draw along with my other loos coins which customers gave me. I also shortchanged a couple of my customers a few quarter in order to break my bank even at the end of the night because the machine have techinical problems off and on. I already have several write up from being short and I try to prevent getting any more. However at the end of my shift I was even and I ask the cashier next to me to count my coins. It totaled $26 and when I was leaving I flashed it and kept the $26. I have applied for several transfers out of my department but haven't received one because there is a shortage in my department this is unfair, in order to keep my job and eliminate anymore write up I have to break even at all times. I have never took any money from Caesars before but I have shortchanged my customers to break even. (sic) (Exhibit P-3) (emphasis added).

I **FIND** as a matter of fact that respondent deliberately short-changed a customer as charged on July 29, 1988, to which charge she plead guilty, and further **FIND** that she has engaged in this practice several times in the past and has intentionally short-changed a "couple of [her] customers in order to break the bank even at the end of the night."

DISCUSSION AND CONCLUSIONS OF LAW

At issue is whether respondent, Beverly E. Pascal, is disqualified from holding a casino employee license under N.J.S.A. 5:12-86c(2) because of her conviction for the

offense of unlawful taking from a patron which indicates that her licensure would be inimical to the policy control act, and, beyond that, whether she can demonstrate by clear and convincing evidence that she possesses the requisite good character, honesty and integrity required by N.J.S.A. 5:12-89b(2) and 90b. Both issues include application of the factors of rehabilitation, set forth in N.J.S.A. 5:12-90h. The Casino Control Act provides that:

> The Commission shall deny a casino license to any applicant who is disqualified on the basis of the following criteria:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this Act. . .
>
> c. The conviction of the applicant or any person required to be qualified under this Act as a condition of a casino license, of any offense in any jurisdiction which would be:. . .
>
> (2) Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this Act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within a ten-year period immediately preceding application for licensure in which the applicant demonstrates by clear and convincing evidence does not jusitify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expugent or sealing. . . .N.J.S.A. 5:12-86(c)(2).

The "inimical" standards under N.J.S.A.5:12-86, which also appears under subdivision (f) as to assocation with career offenders was found to be not unconstitutionally vague or arbitrary in the matter of Hotel and Restaurant Employees and Bartendars International Union Local 54, 203 N.J. Super. 297 (App. Div. 1985). cert. denied 102 N.J. 352 (1985), cert. denied 475 U.S. 1085 (1986). Although the Casino Control Act does not expressly provide an opportunity for a licensee to prove rehabilitation under N.J.S.A. 5:12-90h, the Commission has held that rehabilitation factors should be considered before concluding that an offense is or is not inimical to licensure under the Casino Control Act. See, Davis v. Division of Gaming Enforcement, 8

N.J.A.R. 301 (1985). These factors were also recently held by the Appellate Division of New Jersey Superior Court in the case of Dunston v. Division, dec'd April 10, 1990, A-197-89T3, to apply to the question of whether an applicant has succeeded in proving a clear and convincing evidence that he or she possesses the required good character, honesty and integrity as provided by N.J.S.A. 5:12-86(b)(2) and 90(b).

The Division has the burden of going forward and of demonstrating by a preponderance of the believable evidence that grounds exist for statutory disqualification resulting from a commission of an offense or conduct which would be inimical [e.g., extremely adverse] to the policies of the Casino Control Act and to casino operations within the meaning of N.J.S.A. 5:12-86(c)(2). The licensee, in turn, has the burden of affirmatively demonstrating rehabilitation under N.J.S.A. 5:12-90(h) and of establishing, by clear and convincing evidence, the required good character, honesty and integrity.

In determining whether the applicant has affirmatively demonstrated her rehabilitation from disqualification as part of inimicality, and also shown good character, honesty and integrity, the Commission must consider the following factors:

> (1) The nature and duties of the position applied for;
> (2) The nature and seriousness of the offense or conduct;
> (3) The circumstances under which the offense or conduct occurred;
> (4) The date of the offense or conduct;
> (5) The age of the applicant when the offense or conduct was committed;
> (6) Whether the offense or conduct was an isolated or repeated incident;
> (7) Any social conditions which may have contributed to the offense or conduct;
> (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of addition 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 (emphasis added).

The nature of the duties of the position applied for (factor one) are those of cashier, and the exchange of money (often, but not always from patrons to the casino) is

at the very heart of the casino's functioning, even though it is not a part of the actual gaming process. The offense of short-changing casino patrons is extremely serious, even if of a relatively small amount for each transaction, as was the case here, and it defeats the patrons' reasonable expectation that they will not be short-changed or "ripped off" by cashiers as they go out to try their luck with the slots (a/k/a one arm bandits) and other "games of chance." Casino patrons are just as entitled to not be cheated of their hard earned money at the cashiers booth, as they are of being free of loaded dice, and other unlawful means of taking their money (factor two). This offense occurred in July 1988, which was less than a year before the hearing and the applicant, who was 24 at the time of the hearing, admitted that she had previously short-changed "a couple of customers" to break even, even though she denied doing so on July 29, 1988. Her conduct was thus a repeated, although undetected, incident. She cites no social conditions which may have contributed to the offense or conduct nor does she cite any compelling evidence of rehabilitation, offers no character references or other evidence that might be considered in mitigation of the offense. (factor eight). Her explanation of the practice of short-changing patrons is that she was under great pressure on the job to break even at the end of the night in her "bank" as a cashier, and she only short-changed a small amount to cover any discrepancies. Her motive, therefore, was that of keeping her job and not of taking the money for herself. That may be the case, but the fact remains that she deliberately decided to keep her cashiers "bank" even at the expense of unknowing and trusting patrons, who had reasonable expectation that they would not be the victim of any kind of theft by casino employees, before they even stepped onto the casino floor to try their luck.

Considering all these factors of rehabilitation, I **CONCLUDE** that the Division has shown by a preponderance of the believable evidence that the licensure of Beverly E. Pascal would be inimical to the polices of the Casino Control Act and to casino operations. Even though the amount of money was small on this occasion, it was evident that she engaged in this practice on at least several occasions, and whenever she needed to to break even for the day. Under these circumstances, her offense renders her licensure inimical.

The final and related issue is whether the respondent can establish by clear and convincing evidence her good character, honesty an integrity as required by N.J.S.A. 5:12-89(b)(2), 90(b):

The Appellant. . .

> shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application.

Under 89(b)(2), the applicant must establish good character, honesty and integrity as a matter of reputation. See, Application of Boardwalk Regency Corporation for casino license, 90 N.J. 361, 369 (1982), appeal dismissed 459 US 1081 (1983). Applicants have been found not to have established their good character, honesty and integrity as a matter of fact, where there is evidence that they have engaged in such nefarious activities as swindling patrons by altering dice, or procuring prostitutes for a foreign official engaged in casion regulations. See, Alter v. Division of Gaming Enforcement, 6 N.J.A.R. 584 (1979); Division of Gaming Enforcement v. Matta, 5 N.J.A.R. 439 (1983). The Appellate Division recently held in the Dunston case that the factors of rehabilitation as set forth in Section 90(h) are relevant and must be considered by the Commission in assessing her claim of good character, honesty and integrity under 90(b).

The above discussion and application of the factors of rehabilitation in 90(h) in this case, applies with equal force to the question of good character, honesty and integrity, and leads to the same result of revocation of the respondent's license. Deliberate shortchanging of casino patrons is both disqualifying misconduct inimical to the policy of the Casino Control Act and to casino operations and also indicative, as practiced, of an insufficient level of good character, honesty and integrity to allow Ms. Bascal to maintain her license and I so **CONCLUDE.** Although she may have just been responding to what she perceived as the pressures of her cashier position to break even at the end of the day and to keep her job and not for personal profit, the means she chose was theft of patrons and, however, small the amount taken each time, that is more than an ample reason for the Commission to revoke her casino employee license and I **RECOMMEND** that it do so.

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This recommended decision may be adopted, 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.

7.2.90
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

7/5/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 10 1990
DATE

Jayne LaCubera/KS
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

On behalf of the Petitioner:

P-1 State Police report by Detective J. Cordy of July 29, 1988

P-2 Municipal Court complaint and judgment of conviction

P-3 Written statement by the respondent given on January 31, 1988

On behalf of the Respondent:

None

WITNESSES

On behalf of the Respondent:

Beverly Pascal

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-194
LICENSE NO. 040234-21
OAL DOCKET NO. CCC 555-89
ORDER NO. 90-39-2

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF CHRISTINA W. PAUL

ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meetings of September 5, 1990 and October 3, 1990,

IT IS on this 12th day of December 1990, ORDERED that the decision is modified as follows:

> The administrative law judge erred in excluding, on grounds of relevance, evidence of the applicant's 1969 shoplifting conviction and her failure to disclose information on the Personal History Disclosure Form which she had filed in 1978. The mere fact that this evidence was fully considered in prior license proceedings before this Commission in 1982 does not detract from its relevance to a present inquiry into the applicant's qualifications for renewal of her license. This is especially true where, as here, the negative information constituted disqualifying conduct in proceedings before this Commission in 1979. In evaluating an applicant's qualifications for licensure under the Casino Control Act, the individual's entire life history is subject to scrutiny. In re Boardwalk Regency Casino Application, 10 N.J.A.R. 295, 324 (1980). The weight to be ascribed to any particular evidence of misconduct may, in fact, be diminished by the passage of time, but its relevance is self-evident.

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

BY: _____
STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 555-89
AGENCY DKT. NO. 89-EA-194

APPLICATION BY
CHRISTINA W. PAUL
FOR RENEWAL OF HER
CASINO EMPLOYEE LICENSE,

Alfred J. Bennington, Jr., Esq., for petitioner (Bennington & Williams, attorneys)

Ralph L. Fusco, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: October 6, 1989 Decided: June 28, 1990

BEFORE **RICHARD J. MURPHY**, ALJ:

STATEMENT OF THE CASE

The Division of Gaminig Enforcement (Division) objects to the renewal of Christina W. Paul's casino employee license based on her alleged involvement in a bingo hall scam in California at the behest of her then boyfriend, and also because of possession of a controlled dangerous substance in the form of cocaine in her home, which she claimed belonged to the same boyfriend. Ms. Paul, who has been licensed by the Commission since 1982 and has worked continuously at Bally's during that period, argues that she was unwittingly involved in what turned out to be illegal activities by a con man, with whom she had fallen in love. For the reasons discussed below, her rènewal application is granted.

PROCEDURAL HISTORY

Following the Division's objections to the renewal of Christina Paul's casino employee license on October 27, 1988, the Commission filed this matter with the Office of Administrative Law on January 25, 1989 for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The case was preheard on April 6, 1989 and the hearing was held in Absecon on August 11, 1989 and it was completed on October 6, 1989 in Pleasantville. The due date for submission of the initial decision in this matter was extended on several occasions for reasons unrelated to this case, including a pending public utility matter and resulting backlog of opinions. I regret any hardship, aggravation, or inconvenience that this unavoidable delay may have caused the parties.

ISSUES TO BE RESOLVED

1. Whether the applicant is disqualified from holding a license under N.J.S.A. 5:12-86c(2) and 86g for commission of the offense of possession of a controlled dangerous substance (CDS) contrary to N.J.S.A. 2C:35-10, which indicates that licensure would be inimical to the policies of the Casino Control Act and casino operations in the state of New Jersey under subsection c(2) even if this conduct has not or may not be prosecuted under the criminal laws of the state or pursuant to N.J.S.A. 5:12-86d is the subject of current prosecution or pending charges for an offense included within section 86c.

2. Whether the applicant can demonstrate by clear and convincing evidence that she possesses the requisite good character, honesty and integrity required by N.J.S.A. 5:12-89b(2), and 90b, including consideration of the factors of rehabilitation as set forth in the recent Appellate Division case of Dunston v. Division of Gaming Enforcement, decided April 10, 1990, A-197-89T3.

FINDINGS OF FACT

There is no dispute as to the material facts. The Division's objection is based on the applicant's involvement in a California bingo scam in 1985 and the presence of a controlled dangerous substance, in her home which was found during a search related to the bingo scam. Before we get to those events, the Division in its objection of October 27, 1988 and at the hearing, sought to introduce evidence on this renewal application of matters occurring prior to the Commission's June 22, 1982 issuance of a casino employee license to Christina Paul. Because the Commission had already fully considered these aspects occurring prior to June of 1982 and determined that Ms. Paul was not disqualified and possessed the requisite good character, honesty and integrity for licensure in 1982, I ruled at the hearing, and **CONCLUDE** and **ORDER** here that any events or conduct prior to the Commission's granting of Christina Paul's casino license on June 22, 1982 are in no way relevant to this proceeding, which is to be based entirely on conduct and matters occurring after the initial license was granted. The only exception to this ruling would be any matters or conduct occurring prior to June 22, 1982 of which the Casino Control Commission was unaware when it issued Ms. Paul's casino employee license. No such matters have been advanced by the Division, and I **ORDER** that events prior to June 22, 1982 are in no way germane or relevant to this proceeding and that the Commission is bound by its earlier issuance of a license as to those earlier matters. This proceeding concerns and is confined to Ms. Paul's conduct after June 22, 1982, when she initially received a casino employee license after the Commission's presumably thorough review of her credentials and background.

The Division's objection sets forth facts, accurate as far as they go, as to the event and conduct by the applicant in 1985 which form the basis of the state's objection:

> [o]n December 12, 1985 members of the New Jersey State Police executed a search warrant at the home of the licensee at the Parkshore Condominiums in Somers Point, New Jersey with regard to an illegal bingo scam that had taken place in the Barona Indian Bingo Hall in San Diego County, California. Confiscated at the home of the licensee were various documents relating to the illegal bingo scam and also a quantity of a controlled dangerous substance (cocaine). The licensee pled guilty to accusation A-86-04-0730A charging possession of a controlled dangerous substance contrary to N.J.S.A. 2C:35-10 and received a conditional discharge. One of the conditions of her conditional discharge was that she was to undergo urinalysis. [Division's objection at 2]

At the hearing, Christina Paul gave the following account of her relationship and contact with Stewart Siegel, to whom she attributes the problems now resulting in this immediate threat to her license and livelihood. She states that she was born in 1946, was 38 years old in 1985, is single and has never been married. She was licensed by the Commission in 1982, and has worked thereafter for Bally's as a dealer and has never been suspended, and also has a good employment record. In February 1984, she met Stewart Siegel through a girlfriend; he stated that he ran casino junkets and frequently visited Bally's baccarat pit. Between February 1984 and October 1985, Ms. Paul dated Siegel, who flew her out to Las Vegas on occasion, after he took a job as a casino manager out there. He also took her to New York City for a weekend in March of 1985. Ms. Paul testified that Siegel "treated her terrific" and "acted upstanding" and she assumed "he was legit". Siegel also initially told her that he had a house in Smithville, New Jersey, which was not the case.

On October 25, 1984, the couple met in Philadelphia at the Hilton Hotel and after that, stopped seeing each other, partly because of the great distance of the relationship between Las Vegal and New Jersey. Ms. Paul did not see Siegel between October of 1984 and May of 1985. In April 1985, Siegel called her from California, where he was working as a partner in a bingo operation on an Indian reservation, and he asked her to come out to San Diego to join him. She flew out first class at his expense, hoping to reconcile. At that time she was 39 years old, thinking seriously about marriage and children, and saw Mr. Siegel as a possible desirable prospect for those purposes. As she put it, she "wanted him and babies." The day after arriving in San Diego, Ms. Paul was taken by Siegel to the Barona Indian Reservation in El Cajon, California. Siegel asked her to act as a "shill", which is a slange term for a person who poses as a customer in order to generate excitement and decoy others into participating in an activity such as gambling or at an auction house. Acting as a "shill" is not illegal in Las Vegas, or other locations, although it is not permitted in Atlantic City.

The fraudulent bingo game for which Siegel was later convicted, was set up on an Indian reservation in El Cajon, California, outside of San Diego. The game involved some 3,000 contestants, who were mostly Indians from the reservation. Siegel explained to Ms. Paul that her role in helping him as a "shill" was to win the bingo game, and she did indeed win a $25,000 jackpot, of which she kept $3,500, to rig the bingo game, she was instructed by Siegel to circle seven numbers out of a possible 60 on the bingo game, but to leave the eighth blank and then to circle 12 or 13 and yell bingo. Siegel then came out

and filled out a second copy of a two-ply ticket, which he filled in and then deposited in a locked box, at the same time slipping a duplicate of the ticket that he gave to Ms. Paul. The shill's function was to take the duplicate that Siegel put in the loced box and then verify that the ticket was the winning ticket.

Ms. Paul rather unquestioningly went through this process and "won" the game, then provided identification in the form of her casino license when requested, and collected a check for $22,000, of which Siegel later paid her $3,500 in cash. She used $500 to tip the number callers of the bingo game. After the game, she returned the $22,000 check to Siegel, who gave her $3,000 minus the $500 tip to the callers, which she took in large bills so she could shop in nearby Tijuana, Mexico. She stated that she did not think that this was a "scam" and thought that nothing was wrong. In fact, she declared a total of $5,000 received from Siegel on her W-2 forms. (A-12). Ms. Paul had never acted as a "shill" before and did not think that what she was doing was illegal. She claims that she did not suspect that the activity was fraudulent or illegal until police later came to her home as part of an interstate investigation and conducted a search of her home, during which they found a small amount of cocaine (less than one gram) and some marijuana, the latter of which she acknowledged that she smoked "occasionally". (We will return to the issue of these controlled dangerous substances shortly).

After helping Siegel on the Indian reservation, Ms. Paul spent four or five days together with him in San Diego and came away with the feeling that "he loved her". After Ms. Paul returned to New Jersey and her job at Bally's, Siegel continued to send her presents, including eight or nine rabbit fur jackets, which Siegel claimed he obtained from a warehouse owned by him in Las Vegas.

On cross-examination, Ms. Paul admitted that she knew she was going to win the jackpot at the rigged bingo game on the Indian reservation and stated that she wanted the Indians to believe that she had won, and acted in a manner calculated to convince them that she was a surprised and delighted winner. When asked whether she thought she was thereby committing fraud or doing something otherwise illegal, she answered that she assumed that being a shill was legal, and that's all she thought she was being, and that she further saw nothing morally wrong with Siegel taking the winning ticket. Looking back, she now sees that her conduct was immoral, but that night she did not think it was wrong and assumed that Siegel, with whom she had fallen in love, was not doing anything wrong. She felt that acting as a "shill" encouraged play at the bingo game and excited the crowd

and encouraged gambling. Although she assumed the game was legal, she admitted that she knew that it would be illegal in New Jersey to take the slip out, as Siegel had done, and that she would report such conduct to the Commissioner or some other authority if she observed it. But since Siegel, in whom she had placed trust and confidence, assured her that her role was only to act as a shill and win in order to encourage others to gamble, she had no feeling of guilt at the time.

Christina Paul was only one of six women brought to California by Stewart Siegel to act as shills in fraudulent bingo games at the Barona Indian Reservation run by the American Amusement Management, Inc. between October 1984 and September 1985. (A-12). She claims that several other of these women have been used and manipulated emotionally by Siegel, as she feels that she has been. In California, Siegel was indicted for felony grand theft, for his scam in manipulating the outcome of bingo games and causing a prearranged player-accomplice ("shill") to win. No charges were filed against Christina Paul, and she received transactional immunity for testimony against Siegel, who later pled guilty to four counts of grand theft. (Ibid.) Siegel's testimony in San Diego, California, on December 8, 1986 did not incriminate Ms. Paul other than to list her as one of the shills that he used in his operation. (A-15; T60, 14-28). A report prepared by Division Agent Karen Smolenski states that ". . . [c]hristina Paul became one of Siegel's girlfriends while he was in New Jersey. Steward Siegel is believed to have organized crime ties . . . Christine Paul was granted immunity from prosecution for involvement in this scam in return for her full and truthful account and testimony . . . ." (A-17 at 2) (emphasis added). Ms. Paul fully cooperated with the California authorities under a transactional immunity (A-11) and Siegel ultimately pled guilty to grand theft as stated.

Ms. Paul's problems stemming from her relationship with Siegel (which I find, as a matter of fact, was entirely romantic on her part and had no other motive discernible from the facts presented), did not end in California but became compounded in New Jersey when a search of her condominium in the course of the bingo scam investigation turned up a small amount of cocaine and marijuana. The cocaine was found in a box that the applicant claims belonged to Mr. Siegel, which had not been unpacked after her recent move to the condominium. A small amount of marijuana was also found in Ms. Paul's condo, which she admitted possessing and occasionally using in order to get to sleep after a hectic work day in the casino. The marijuana did not belong to Siegel. She denied ever being under the influence of marijunana at work or at the casino. She also denied any knowledge of the presence of cocaine in Siegel's belongings, and states that when she

pled guilty to the accusation (A-5), she did not think she was also pleading guilty to possession of cocaine. Charges against her were later conditionally discharged (A-8), and she submitted to urinalysis monitoring without any drug use detected and completed the other terms of her probation. Ms. Paul did not recall where she obtained the small quantity of marijuana found in her apartment, but said that she never purchased the drug and that it may have been given to her, possibly by Siegel, but she is unsure of this.

Ms. Paul also recalls being contacted by an investigator from the Division, and stated that she declined to answer questions initially, on the advice of her attorney. She does not recall if she told the Division investigator that she did not know to whom the box containing cocaine belonged and also does not recall denying to the investigator that the marijuana was hers. Division Agent Karen Smolenski testified that she had called Ms. Paul some six times without receiving a return call, and then, on July 17, 1986, when she did speak to Ms. Paul, the applicant refused to talk without her attorney present and also denied that the drugs belonged to her. According to Ms. Smolenski, Ms. Paul declined to talk about the bingo scam except through her attorney and denied that the cocaine belonged to her. The applicant did admit that she had pled guilty to the drug charge because the CDS were found in her possession and she viewed them as her responsibility.

Ms. Paul denies avoiding the Division investigator, and states that she instructed the agent to talk to her attorney, because of the criminal nature of the charges. In discussing the drug aspect with the agent, Ms. Paul stated that she thought that the phrase controlled dangerous substance (CDS) meant cocaine and not marijuana, and she denied that the cocaine belonged to her. Ms. Paul thus denies any failure to cooperate with the Division's investigation, which could provide another basis for disqualification. She also states that she was asked by the New Jersey State Police to cooperate as to the source of the marijuana, but denies that she ever advised them that she would provide the source of that drug. There is no dispute as to the substance of the above facts, and I so **FIND.**

Ms. Paul also provided a number of character references, including Dr. Demitrios J. Constantelos, the Charles Cooper Professor of History at Stockton and also minister of The Holy Trinity Greek Orthodox Church, who had known Ms. Paul since 1971, as well as her family through the family restaurant. He stated that he has the highest regard for her good character, honesty and integrity, and noted that she was president of the Ladies Philosophus Club, which does charitable work with the poor.

Dr. Constantelos stated that his opinion of Ms. Paul was unchanged by his knowledge of her involvement in the California bingo scam and possession of CDS, of which he was unaware prior to the hearing.

Several of Ms. Paul's fellow employees at Bally's also testified. Veronica Long, pit manager at Bally's, stated that she had known Ms. Paul for seven years, mostly on the job, although occasionally on a social basis, for drinks after work. She stated that the applicant, whom she supervised, is assigned to the baccarat pit, which is the high limit of the casino and that her reputation is outstanding and that she is "very honest" and "a hell of a kid". Ms. Long had met Stewart Siegel and found him to be a "funny and charming guy". Ms. Paul told Ms. Long that she had won at a bingo game in California with Siegel, but did not advise her as to the specifics of her role as a shill. Ms. Long's opinion of Ms. Paul's good character, honesty and integrity was unchanged by the drug charges and her involvement in the California bingo scam. Also testifying for the applicant, was Verbena B. Wells, who was a dealer and later a floor supervisor. She found Ms. Paul to be reliable in the baccarat pit, as well as dependable, courteous and efficient. Ms. Wells was sympathetic toward Ms. Paul's situation with Mr. Siegel, and viewed her as "susceptible" and "vulnerable" to Siegel's hustler's "rap" and noted that "aren't we all".

The last witness for the applicant was Joseph Orzehowski, pit boss at Bally's Grand (now the Golden Nugget) who had known the applicant for 14 years and viewed her like a "little sister", and was active together in the church. He felt that Ms. Paul had been used by Siegel, whom he described as a "scumbag" (a description with which Ms. Long enthusiastically agreed), and felt that she had been blinded by her love for him and been badly used. In short, Mr. Orzehowski felt that Ms. Paul, nearing 40, saw that time was passing her by and Mr. Siegel took ill advantage of her feelings and fears. Another acquaintance of Ms. Paul's for the last 18 years, Ms. Peggy Giordano, submitted a character reference stating that she has always found her to be "nothing short of honest, sincere, and trustworthy and responsible". (A-14).

The applicant submitted supervisory evaluation forms prepared on her by Bally's Grand which were consistently of high order, except in some areas of attendance, which she later improved. There are no serious problems noted on these evaluation reports, and Bally's was, on the whole, very happy with her performance and attitude.

DISCUSSION AND CONCLUSIONS OF LAW

The Division argues that Ms. Paul's involvement in the California bingo scam and possession of a controlled dangerous substance render her continued licensure inimical and prevents the Commission from concluding that she has shown her good character, honesty and integrity by clear and convincing evidence as required by N.J.S.A. 5:12-89b2, 90b. In support of this conclusion of nonrenewal, the Division also advances as relevant and probative conduct in matters preceding the Commission's granting of a casino license to the applicant on June 22, 1982. As previously set forth, I ruled that evidence prior to June of 1982 was not relevant to this renewal proceeding, in that the Commission had already considered those matters and determined to license Ms. Paul and was bound by that previous determination as to any facts known to it. In my view, the Commission's issuance of a license in 1982 with the Division's consent, bars DGE from resurrecting those earlier matters now and using them as a jusitification for denying Ms. Paul's renewal. Her current renewal application has to rise and fall on events transpiring after the Commission's action in 1982 of granting Ms. Paul a license and I so expressly **CONCLUDE**, given the Division's expressed desire to challenge this ruling.

Both the determination of inimicality under 86c2 and of good character, honesty and integrity under 89b2, 90b, require consideration of the factors of rehabilitation, as set forth under N.J.S.A. 5:12-90h. See, Division of Gaming Enforcement v. Davis, 8 N.J.A.R. 301, 314 (1985); Dunston v. Division of Gaming Enforcement, Superior Court of New Jersey, Appellate Division, decided April 10, 1990, A-197-89T3:

> [i]n determining whether the applicant has affirmatively demonstrated his [or her] rehabilitation the Commission shall consider the following factos:
>
> (1) The nature and duties of the position applied for;
>
> (2) The nature and seriousness of the offense or conduct;
>
> (3) The circumstances under which the offense or conduct occurred;
>
> (4) The date of the offense or conduct;
>
> (5) The age of the applicant when the offense or conduct was committed;

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

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

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psyciatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, with the recommendation of persons who have or have had the applicant under their supervision. N.J.S.A. 5:12-90h [emphasis added].

The applicant argued that her duties as a floorperson were significant, but played down the seriousness of the CDS offense, in light of the widespread use of marijuana and cocaine by the general population. She characterized her involvement in the California bingo scam as, though wrong and immoral, not a serious crime in the great scheme of things. Although the applicant was in her late 30s at the time of the offenses, which were isolated and not repeated, she stressed the social conditions contributing to her offense consisting of her blind and trusting romantic involvement with a con man and a swindler, whom the Division characterizes as having ties to organized crime. Ms. Paul also notes that she fully cooperated with the California authorities in prosecuting Stewart Siegel. In terms of her rehabilitation, the applicant cites her work with her church, some of which predated the offense, as well as her good work record at Bally's and the references of her friends and associates.

The deputy attorney general representing the Division stated, in closing, thus, if just CDS were involved, the Division might not have objected to Ms. Paul's licensure, but the fact of the California bingo scam, combined with the CDS, led to the Division's objection. Specifically, the Division argues that Ms. Paul knew that there was a scam going on at the California Indian reservation and knowingly and voluntarily cooperated in that fraud. The DAG also notes that she benefited financially from this fraud, in the form of the $5,000 cash received from Siegel. Although the Division concedes that people are all "fools in love", it also finds the applicant's claim of naivete as to "shilling" to be unbelievable and stressed that there is "a little larceny in everyone's heart." It also notes that Ms. Paul failed to cooperate initially with the Division's investigation, and also had a faulty memory as to the source of marijuana found in her possession.

As to the issue of the applicant's failure to cooperate, which alone can be disqualifying under N.J.S.A. 5:12-86(b)[1], I **CONCLUDE** that such failure has not been shown on the part of the applicant. Although she was reluctant to return the Division's calls and perferred to handle them through her attorney, this is understandable behavior on the part of someone who had been given transactional immunity in California and pled guilty to the CDS charge in New Jersey and does not amount to a failure to provide information requested under N.J.S.A. 5:12-86(b) and I so **CONCLUDE.**

As to the factors of rehabilitation, which were essential to finding of inimicality and of good character, honesty and integrity, I note the following. As the applicant concedes through her character witnesses, her position on the floor of the baccarat pit is in one of the more high stake areas of the casino, where many thousands of dollars often ride on single bets, and thus is of a particularly sensitive nature. (Factor 1). The offense or conduct of acting as a shill in a clearly rigged game that later resulted in a multi-count indictment for grand theft, and possession of controlled dangerous substances are serious, particularly in that the former is related to gaming activities.

But there are, however, mitigating factors arising from the circumstances. It is evident that Ms. Paul cooperated in the 1985 California bingo scam because of her romantic relationship with Siegel and it is also not disputed that, at the time, she did not feel that her activities were illegal or immoral, and did not have a deep understanding or the proper and legal role of a "shill". She was nearing 40 years of age at the time, had never been married, and very badly wanted a marriage and family of her own. At this point in her life, she came into contact with Stewart Siegel, who may be most charitably described as a charming con man who, though he very well may have had genuine feelings of love for Ms. Paul, also used her, apparently without any compunctions whatsoever, to carry off his California bingo scam. Ms. Paul was not the only woman duped by Siegel: he flew several others in to act as shills in this fraud. But she was particularly vulnerable

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[1] That section 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 material fact pertaining to the qualification criteria . . . .

and susceptible to his entreaties and charms because of her own feelings for him and her own desire to have a future and a family with him. She was, I suppose, old and experienced enough to know better than to place such unquestioning trust in Mr. Siegel, but she was viewing him and his activities through the sometimes distorting prism and lens of love and longing. Profit and money played no part in her traveling to San Diego at Siegel's expense and in her playing the part of a shill in his scam, even though she later received several thousand dollars, reported to the IRS as gambling winnings. Certainly a person exercising reasonable care would have quickly realized that the Indian reservation bingo game had been rigged by Siegel and that the role of the shill amounted to nothing more than theft, but Ms. Paul was not familiar with the role of a shill, and was also blinded for her love for Siegel and driven by her great desire to reconcile with him after their breakup. For that reason she complied unquestioningly and with great naivete with his request that she help in what was clearly a rip-off of unsuspecting bingo players. That offense was a serious one, as the state of California recognized when it hit Siegel with a six-count indictment for grand theft. But the prime mover and brains behind the operation was Siegel, who coldbloodedly took advantage of Ms. Paul's feelings and desires, and possibly did this with a number of other women he used as shills.

I also found Ms. Paul's statements concerning the cocaine to belong to Siegel to be credible, and her admission of use of small amounts of marijuana to be straightforward and believable. The possession and use of drugs are also serious matters, even in the privacy of one's home, but I believe Ms. Paul's explanation that the cocaine belonged to Siegel, and that she pled guilty because she felt that, nonetheless, it was her responsibility because it was in her home. Again, Ms. Paul's emotional entanglement with Siegel was the prime cause of the cocaine possession charge and that is a very mitigating circumstance. Both her participation as a shill in the California bingo scam and her possession of drugs (except for the marijuana, which is less serious) were isolated and not repeated incidents, and both were prompted and caused by her relationship with Siegel, which, if not a "social condition" under 90h(7) was an essential component of the circumstances in which the offense occurred.

In addition to the mitigating factors surrounding the offenses, there is substantial evidence of rehabilitation in the form of Ms. Paul's continued good performance on the job as noted by character witnesses and evaluations, as well as her good works in the community through her church, as noted by other witnesses.

Under the circumstances taken as a whole, I **CONCLUDE** that Ms. Paul's licensure is not inimical to the policies of the Casino Control Act or to casino operations under N.J.S.A. 5:12-86c2, taking into consideration the factors of rehabilitation as discussed above, and I further **CONCLUDE** that she has shown by clear and convincing evidence her good character, honesty, and integrity so as to continue to hold her casino employee license. This is a case in which a person who had long functioned as a good and trusted casino licensee, was led astray by another who played on her deep and possibly desperate desire for love and a family, which partly blinded her to what cooler eyes might have quickly seen: that she was being used by a con man to commit fraud on others and thereby being defrauded herself:

> [b] ut love is blind, and lovers cannot see
> the pretty follies that themselves commit
> [Shakespeare]

I do not usually garnish initial decisions with Shakespearean quotations, but this case, more than some I have heard, turns on very human and somewhat tragic terms and I recommend that the Commission not compound Ms. Paul's misfortune in love by taking away the gambling license that she has held long and well, except for her unfortunate association with a con man.

ORDER

It is **ORDERED** that the renewal application of Christina W. Paul as a dealer, for blackjack and roulette, as well as a floorperson for blackjack and roulette, is **GRANTED.**

This recommended decision may be adopted, 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.

6.26.90
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

6-29-90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 03 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

ij

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WITNESSES

For the applicant:

Christina W. Paul
Dr. Dimitrios J. Constantelos
Veronica Long
Verbena B. Wells
Joseph Orzehowski

For the Division:

Karen Smolenski, Agent

EXHIBITS

A-1 Photograph

A-2 Copy of check for $22,000 and 1985 W-2 form of Christina W. Paul

A-3 Bank statement of Christina W. Paul, dated 4/25/85 (2 pages)

A-4 Bank statements for 1985 (18 pages)

A-5 Copy of an order, dated April 30, 1986

A-6 Copy of Waiver of Indictment, dated April 14, 1986

A-7 Copy of sentence work sheet, dated 6/2/86 (2 pages)

A-8 Copy of application for termination of probation, dated 4-7-87

A-9 Copy of conditional discharge, dated 6-6-86

A-10 Bank statement, dated 5/31/85

A-11 Letter from Gary W. Schons, DAG in California, to Alfred Bennington, Esq., dated 12/17/85 (2 pages)

A-12 Plea Agreement, dated April 2, 1986 (4 pages)

A-13 Evaluation reports from Bally's Grand and Golden Nugget (14 pages)

A-14 Letter of character reference from Peggy Giordano, dated 9/22/89

A-15 Court testimony in San Diego, California, dated 12/8/75 (17 pages)

A-16 1040 and W-2 IRS forms for 1985 (5 pages)

A-17 Memo from Agent Karen Smolenski to G.E. Rogers, Supervising Agent, dated 3/2/87 (3 pages)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-391
APPLICATION NO. 077783-21
OAL DOCKET NO. CCC 03624-89
ORDER NO. 90-41-5

APPLICATION OF JOSEPH F. PEPE
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 October 17, 1990,

IT IS on this 30th day of October 1990, ORDERED that the initial decision is modified as follows:

1. The second full paragraph on page seven of the initial decision is modified to reflect that the applicant is 31 years old.

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3624-89

AGENCY DKT. NO. 89-EA-391

JOSEPH F. PEPE,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Alfred J. Bennington, Esq., for petitioner (Bennington & Williams, attorneys)

James J. Armstrong, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: November 21, 1989 Decided: September 5, 1990

BEFORE **JOSEPH FIDLER,** ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Joseph F. Pepe (petitioner) for licensure as a casino employee, which would permit his employment in a licensed casino as a blackjack dealer. By letter report to the Casino Control Commission dated March 20, 1989, the Division of Gaming Enforcement objected to the petitioner's licensure, based upon his alleged conduct which in New Jersey would be the third degree offenses of promoting gambling and possession of gambling records, contrary to N.J.S.A. 2C:37-2(a)2 and N.J.S.A. 2C:37-3(a)1.

These are the issues:

1. Has the petitioner committed acts which in New Jersey would constitute the third degree offenses of promoting gambling and possession of gambling records, contrary to N.J.S.A. 2C:37-2(a)2 and N.J.S.A. 2C:37-3(a)1, which would be automatic disqualifiers from licensure pursuant to sections 86c(1) and 90e of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), even if such conduct was not prosecuted in the criminal courts of this state, as permitted by section 86g of the Act.

2. If the petitioner has committed acts which constitute an otherwise disqualifying offense pursuant to section 86c(1) of the Act, has he affirmatively established his rehabilitation by clear and convincing evidence, pursuant to section 90h of the Act.

3. Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act.

PROCEDURAL HISTORY

By letter to the Casino Control Commission dated May 5, 1989, the petitioner requested a hearing on his application for licensure. On May 17, 1989, 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 telephone prehearing conference was held on August 18, 1989. The matter was thereafter heard as scheduled on November 21, 1989, in Pleasantville, New Jersey. The record closed on that date. Issuance of this initial decision was delayed because of my heavy caseload, exacerbated by illness requiring my absence from the office for an extended period.

FINDINGS OF FACT

The material facts in this matter are undisputed. The petitioner is a 31-year-old resident of Margate, New Jersey. He is employed by Bally's Grand Casino Hotel as a parking valet. The petitioner seeks a casino employee license. In addition to having taken the necessary course work for dealing blackjack, the petitioner has also completed a craps dealer course.

Division of Gaming Enforcement Investigator Danial J. Keitt testified that he conducted an investigation concerning the petitioner's employee license application. This investigation revealed that the petitioner was arrested in Philadelphia, Pennsylvania on January 19, 1985, and charged with bookmaking under section 5514 of the Pennsylvania Criminal Code (Exhibit R-1). The arrest arose following execution of a search warrant at the home where the petitioner resided with his parents. A copybook containing a record of over 500 sports bets valued in excess of $250,000 was found in the petitioner's bedroom. This copybook showed that the petitioner had accepted bets between September 6, 1984, and January 18, 1985.

On May 8, 1985, the petitioner entered a plea of guilty to a charge of operating an illegal lottery (Exhibit R-2). The sentence imposed was probation for a period of one year. The petitioner disclosed this arrest and conviction on his personal history disclosure form (Exhibit R-3). It is undisputed that the petitioner completed his probation without incident and paid his fines and imposed costs. It is also undisputed that the petitioner had no arrests or convictions prior to this offense and has had no arrests or convictions since.

Testifying on his own behalf, the petitioner stated that he had been unemployed and was living at home prior to his arrest in January 1985. His family was not in good financial shape and the petitioner wanted to help pay some of the bills. He began calling a telephone number which provided point spreads for sporting events and he started to accept bets. According to the petitioner, the bets were mainly for football games, and some basketball games. He said that he did not take any bets on baseball.

The petitioner testified that taking bets was a common occurrence where he lived in south Philadelphia. His dollar volume handled on any given day would generally be around $200. These bets were placed by people in the neighborhood. When the police executed their search warrant, they found the petitioner's copybook which recorded the bets.

The petitioner testified credibly that his first activity taking bets began in September 1984. He had never done it previously. A friend was retained as his attorney and he persuaded the petitioner to enter a plea of guilty to operating an illegal lottery. Thus, the petitioner was sentenced to one year probation, with no requirement for community service. The petitioner stated that his attorney represented him for free and made no legal attack on the validity of the search warrant. In addition, his attorney did not advise him of any future consequences of his guilty plea.

Testifying on cross examination, the petitioner provided more details concerning his bookmaking activity. He accepted bets only on weekends and on the average, he would have from eight to ten people call him on Saturday and about the same number again on Sunday. The average wager was between $50 and $100, so the petitioner's "handle" for the weekend would be around $1,300. He estimated that over the season prior to his arrest, he made "a couple thousand" dollars.

The petitioner testified sincerely that he has not engaged in any sports betting since 1985. He badly needed the money at the time and allowed himself to do something stupid which he now regrets. Since it was accepted behavior in his community, he did not realize its seriousness at the time. He now recognizes his mistake with the law. He acknowledges his illegal conduct and knows that it was wrong.

After working in Philadelphia as a valet driver, the petitioner came to the Atlantic City area and obtained employment at Bally's Grand as a valet parker. He has also done some construction work. It is the petitioner's sincere desire to maintain stable employment and he would like to enjoy the opportunities available to the holder of a casino employee license.

Several witnesses testified on the petitioner's behalf. Anthony J. Cipriano is a craps dealer at Bally's Grand, and he has known the petitioner since September 1988, when they met at craps dealer school. He described the petitioner as a well-liked and reliable friend. The petitioner is someone who can be trusted.

Joseph V. Marchione has known the petitioner all his life. He described the petitioner as friendly, mannerly, and respectful. It was his testimony that the petitioner has a reputation for honesty and good character. Philadelphia State Representative Joseph Howlett also testified. He has known the petitioner for many years and he described the petitioner as an honest man. Representative Howlett was aware of the petitioner's 1985 arrest when it happened. In his opinion the petitioner deserves a second chance. In support of this view, Representative Howlett disclosed that he had once been arrested himself.

Representative Howlett described several ways in which he knows that the petitioner has done the morally right thing. The petitioner has assisted senior citizens in his legislative district and has helped involve younger children with sports. In addition, Representative Howlett once handed $300 to the petitioner, thinking that it was only $200. The petitioner was to bring the money to his father. When the petitioner noticed that he had been given $300 instead of $200, he promptly let Representative Howlett know of the mistake.

James J. DeMarco, a Pennsylvania attorney also testified on the petitioner's behalf. He stated that the petitioner and his family are very well respected. According to Mr. DeMarco, he would not have come from Pennsylvania to testify at the hearing if he thought the petitioner was dishonest. Edward R. Smith testified that he has worked with the petitioner as a valet parker since May 1985. He has known the petitioner since they attended blackjack school together. In Mr. Smith's opinion, the petitioner is an honest employee.

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. Pursuant to sections 89b(2) and 90b of the Act, and applicant for a casino employee license must demonstrate by clear and convincing evidence his good character, honesty and integrity. Section 90e incorporates the disqualification criteria set forth in section 86 of the Act. Pursuant to sections 86c(1) and 86g of the Act, the Commission shall deny a casino employee license to any applicant who has committed an offense specifically identified as a disqualifier from licensure, even if such conduct has not been or may not be prosecuted under the laws of this state.

It is undisputed that the petitioner accepted bets from members of the public. These bets concerned the outcome of sporting events. To conduct this activity the petitioner relied on recording the bets in a copybook. On weekend days between September 1984 and January 1985, the petitioner would accept an average of eight to ten bets in amounts which averaged between $50 and $100.

Pursuant to N.J.S.A. 2C:37-1g, "bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public upon the outcome of future contingent events as a business. Under N.J.S.A. 2C:37-2, a person who engages in bookmaking to the extent he receives or accepts in one day more than five bets totalling more than $1,000 is guilty of the crime of promoting gambling in the third degree. Under N.J.S.A. 2C:37-2b, a person who engages in bookmaking to the extent he receives or accepts three or more bets in any two-week period is guilty of a crime of the fourth degree.

Pursuant to sections 86c(1) and 86g of the Casino Control Act, persons who commit gambling offenses under N.J.S.A. 2C:37-1 et seq. which constitute crimes of the third or fourth degree are disqualified from licensure. Therefore, I **CONCLUDE** that the petitioner is subject to denial of his application for a casino employee license on the basis of his commission of the offense of promoting gambling in the third or fourth degree, in violation of N.J.S.A. 2C:37-2. In addition, a person is guilty of possession of gambling records in violation of N.J.S.A. 2C:37-3, when he possesses any writing, paper, instrument or article with knowledge of its contents, of a kind commonly used in the operation or

promotion of a bookmaking scheme or enterprise. The petitioner's use of a copybook to record the bets which he accepted fulfills the elements of this offense, which is a crime of the third degree. Therefore, I further **CONCLUDE** that the petitioner is subject to denial of his application for a casino employee license, pursuant to sections 86c(1) and 86g of the Act, for his commission of the third degree offense of possession of gambling records, in violation of N.J.S.A. 2C:37-3.

Section 90h of the Casino Control Act provides that an applicant shall not be denied a casino employee license on the basis of his otherwise disqualifying conduct, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. In determining whether rehabilitation has been affirmatively demonstrated, the following eight factors should be considered: the nature and duties of the position involved; the nature and seriousness of the conduct; the circumstances under which it occurred; the date of the conduct and the actor's age when it was committed; whether the offense was isolated or repeated; social conditions contributing to the conduct; and any evidence of rehabilitation following the conduct.

The respondent is now 34 years old. His offense occurred when he was 25. Although his illegal gambling conduct occurred over a period of several months, the petitioner was never previously involved in illegal activity and has not been since.

The petitioner's offenses occurred when he was unemployed and needed to help his family pay the bills. In his neighborhood, bookmaking was a common and generally accepted behavior. Although the petitioner did not realize the seriousness of this conduct when it occurred, he has since realized that it was a mistake and that it was wrong. He regrets his conduct and he believes that it is well in his past.

The petitioner satisfactorily completed his probationary period, and paid his fines and costs. He has successfully completed training to qualify for employment as a blackjack dealer. The petitioner has demonstrated his increased maturity since his arrest in January 1985. It is highly unlikely that he will have any further criminal involvement. Based upon the foregoing evidence and the applicable law, I **CONCLUDE** that the petitioner has established his rehabilitation by clear and convincing evidence, within the meaning of section 90h of the Casino Control Act. Substantial credible evidence was also presented at the hearing to establish the petitioner's good character, honesty and

integrity. Based upon this evidence, I **CONCLUDE** that the petitioner has shown that he possesses the good character, honesty and integrity required for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Act. Therefore, I **CONCLUDE** that the petitioner's application for a casino employee license should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Joseph F. Pepe for licensure as a casino employee permitting him to work in a casino as a blackjack dealer be **GRANTED.**

This recommended decision may be adopted, 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 5, 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

9/6/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 10 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For the petitioner:

P-1 Character reference, dated November 10, 1989

For the respondent:

R-1 Philadelphia Police Department arrest report
R-2 Philadelphia court history summary
R-3 Personal history disclosure form

WITNESSES

For the petitioner:

Anthony J. Cipriano
Joseph V. Marchione
Joseph Howlett
James J. DeMarco
Edward R. Smith
Joseph F. Pepe

For the respondent:

Daniel J. Keitt

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-434
REGISTRATION NO. 92401-40
OAL DOCKET NO. CCC 07551-89
ORDER NO. 90-43-13

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

Complainant,

ORDER

v.

DREW M. PERRY,

Respondent.

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meetings of October 24 and October 31, 1990,

IT IS on this 14th day of December 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Drew M. Perry is found disqualified from holding a casino hotel employee registration substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

ORDER NO. 90-43-13

IT IS FURTHER ORDERED that the disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit Drew M. Perry to retain his casino hotel employee registration and he remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91, subject to the condition that he does not violate the conditions of his probation; and

IT IS FURTHER ORDERED that should a complaint for violation of probation be filed against Drew M. Perry his registration will automatically be suspended pending the outcome of any such proceeding; and

IT IT FURTHER ORDERED that Drew M. Perry is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7551-89
AGENCY DKT. NO. 89-434

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
DREW M. PERRY,
Respondent.

Norma Stancil, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)
Drew M. Perry, respondent pro se

Record Closed: July 27, 1990 Decided: September 10, 1990

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on June 22, 1989, seeking the revocation of the casino employee registration issued to the respondent. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) on October 4, 1989, to be heard 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.

After notice to the parties, a prehearing conference was held on February 20, 1990 at which, among other things, the issues to be resolved by this administrative tribunal were established and the hearing date of July 27, 1990, was scheduled. The matter was heard on July 27, 1990, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The hearing record closed on July 27, 1990.

ISSUES

In accordance with the Division's granted request, the Prehearing Order dated February 26, 1990 was amended to reflect the following issues:

A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:35-5, Possession of a Controlled Dangerous Substance (Cocaine) With Intent to Distribute and Distribution of a Controlled Dangerous Substance (Cocaine)?

B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act?

FINDINGS OF FACT

Based upon the testimony and documents proffered at the hearing, I **FIND** the following **FACTS** in this matter:

Respondent Drew M. Perry is 19 years of age and the holder of casino hotel employee registration no. 92401-40. Respondent is a school "drop out," having only completed grade 10 of high school. He has taken, but has not successfully passed, the New Jersey General Education Development (GED) examination for his high school equivalency diploma. Respondent is single, living with his mother. He is under court order to provide $15 per week in child support for his 3 year old daughter. He is presently employed by a clothing store at the Ocean One Mall on the Atlantic City Boardwalk earning $4.95 per hour.

Respondent was employed by the Claridge Hotel and Casino under his casino hotel registration. He was terminated from his Claridge position on March 18, 1989, for failure to report for duty. Respondent was subsequently employed by Harrah's Marina Hotel and Casino. He was terminated from this position, as a food runner, on May 24, 1989.

Respondent began using alcohol when he was approximately 15 years of age. He subsequently moved into the use and abuse of controlled dangerous substance (CDS). Respondent's mother was an enabler who supplied him with money to purchase alcohol and drugs. On May 4, 1984, respondent was arrested, as a part of a drug undercover operation by the New Jersey State Police (NJSP), for possession of CDS and possession with intent to distribute CDS. Respondent was 18 years of age at the time of arrest when he sold cocaine to Detective John Silver, NJSP, Division of Gaming Enforcement Investigator.

On June 14, 1989, respondent was indicted by the Atlantic County Grand Jury on one count of distribution of CDS, a third degree offense. N.J.S.A. 2C:35-5a(1) On July 31, 1989, respondent entered a guilty plea to an amended charge of possession of CDS (N.J.S.A. 2C:35-10a(1)) before the Honorable Manuel H. Greenberg, JSC, who imposed sentence as follows: (1) Two years probation; (2) $1,000 mandatory Drug Enforcement and Demand Reduction (D.E.D.R.) Penalty; (3) $50 Laboratory fee for processing the CDS; (4) $30 to the Violent Crimes Compensation Board (VCCB); all sums payable monthly; (5) The suspension of his motor vehicle driver license for a term of six (6) months; and, (6) Inpatient or outpatient drug treatment as directed.

On August 1, 1989, one day after respondent had entered his guilty plea to the N.J.S.A. 2C:35-10a(1), offense, he was placed under arrest for the possession of CDS (cocaine). Respondent was again indicted by the Atlantic County Grand Jury on one count of possession of CDS, contrary to N.J.S.A. 2C:35-10a(1). Judge Greenberg assigned the following sentence after respondent entered a plea of guilty to the charge on October 13, 1989; (1) Two years probation to run concurrently with the former sentence; (2) DEDR Penalty of $30; (3) VCCB penalty of $30; (4) Laboratory fee of $50; (5) Suspension of New Jersey driving privileges for six (6) months to run consecutively with former sentence; and, (6) Inpatient or outpatient drug treatment as directed. All of the fines and penalties to be paid in monthly installments.

At the time of the herein hearing, respondent had paid a total of $60 toward the fines and penalties. Respondent paid $50 immediately after the first sentencing and $10 on July 26, 1990, a day prior to the hearing. Respondent's mother provided him with the $50 for the first payment. The second payment of $10 was from respondent's own funds.

Subsequent to his second arrest and prior to the second conviction, respondent entered the Charter Fairmount Institute, Philadelphia, Pennsylvania, on August 21, 1989, for drug/alcohol abuse treatment. He completed the in-patient program and was discharged on September 18, 1989. Respondent's in-patient care at the Charter Fairmount Institute was paid by his mother's insurance program.

Respondent has received a favorable report from his probation officer who asserts, among other things, that respondent is working, going to school and searching for better employment. Respondent reports to the probation office on every scheduled date and he has demonstrated a very positive attitude and eagerness to turn away from a negative lifestyle (R-2).

Respondent participated in a Job Connection program from October 1989 through December 1989. This program, sponsored by Atlantic Community College, addresses the problems of employability and basic skills as well as preparation for the G.E.D. examination. On January 23, 1990, respondent entered into a contract with Associated Business Careers, Atlantic City, for a course of study in Personal Computer Specialist. Respondent successfully completed the course after six months.

Respondent is presently serving his probation, which will terminate on October 13, 1991, if successfully completed.

DISCUSSION AND CONCLUSIONS

Casino Hotel Employee Registration - Disqualification Under N.J.S.A. 5:12-86q as Incorporated Into Section 86c(1) of the Casino Control Act

Section 86c(1) of the Act mandates that a person who has been convicted of any one or more of the enumerated offenses therein under Title 2C of the New Jersey Code of Criminal Justice shall be disqualified from holding a casino employee

license or a casino hotel employee registration. Respondent was arrested, charged and indicted on the charge of distribution of CDS (cocaine) contrary to the provisions of N.J.S.A. 2C:35-5a(1). This offense is one of those enumerated in section 86c(1) of the Act which provides for respondent's disqualification to hold registration as a casino hotel employee. Respondent, however, entered a plea of guilty to the offense of possession of CDS, pursuant to N.J.S.A. 2C:35-10a(1). The offense of possession of CDS under N.J.S.A. 2C:35-10a(1) is not one of those disqualifying enumerated in section 86c(1) of the Act. The Division, therefore, brings this action against respondent under section 86g of the Act, which provides that:

> The Commission shall deny a casino license (or registration) to any applicant who is disqualified on the basis of any of the following criteria
> ....
> g. The commission by the applicant who is required to be qualified under this act as a condition of a casino license of 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;

The evidence produced by the Division, by way of the testimony of Detective John Silver and the documents marked P-1 through P-4 in evidence, clearly demonstrate that respondent, indeed, was in the business of selling cocaine. Respondent's testimony corroborates the Division's assertion that he was in possession of CDS and that he possessed CDS for the purpose of distributing it, specifically on May 4, 1989 as alleged by Detective Silver.

I **CONCLUDE**, therefore, that the Division has met its burden of proof, by a preponderance of the credible evidence, that respondent committed a disqualifying offense, pursuant to section 86g of the Act as it incorporates N.J.S.A. 5:12-86c(1).

Accordingly, I **FIND** and **CONCLUDE** that such disqualifying offense warrants revocation of respondent's casino hotel employee registration as provided by section 86 of the Act.

Rehabilitation Pursuant to N.J.S.A. 5:12-91d.

A current registrant faced with the existence of one or more section 86 disqualifications in a disciplinary proceeding has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his rehabilitation, pursuant to section 91d of the Act. This statute sets forth eight specific criteria to be evaluated when a determination for rehabilitation is to be made. Section 91d of the Act provides as follows:

(1) The nature and duties of the registrant's position;
(2) The nature and seriousness of the offense or conduct;
(3) The circumstances under which the offense or conduct occurred;
(4) The date of the offense or conduct;
(5) The age of the registrant when the offense or conduct was committed;
(6) Whether the offense or conduct was an isolated or repeated incident;
(7) Any social conditions which may have contributed to the offense or conduct;
(8) Any evidence or 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.

(1) Respondent is not currently employed in the hotel/casino industry although he holds casino hotel employee registration no. 92401-40. His previous employment with Claridge and Harrah's ended with his termination for failure to appear for duty and inability to perform his assigned duties. His position as a food runner would have provided him with minimal contact with casino patrons.

(2) Respondent's disqualifying offense of possession of CDS is serious, particularly in view of the fact that respondent is privileged to work in the casino industry, where he has had daily contacts with other casino employees. There is no allegation that respondent possessed or distributed illegal drugs while he was employed at the hotel/casinos. However, he admitted on the hearing record that he used illegal drugs while employed in the casino industry and lost his job at the Claridge, "Because I was too busy getting high." (TR. p. 45, l. 22-23).

(3) Respondent's arrest was as a result of the NJSP conduct of an undercover operation. He, among others, were caught in the sting operation and arrested for possession and possession of CDS with the intent to distribute. Respondent, by his own admission, had abused and distributed drugs for a long period of time prior to his arrest.

(4) and (5) Respondent was arrested for possession of CDS with intent to distribute on May 4, 1989, when he was 18 years of age. He was subsequently arrested on August 1, 1989 for possession of CDS at the same age.

(6) Although respondent's arrest on May 4, 1989, was his first, the conduct of the distribution of CDS had been continuous for a period of years. He admits to the use of alcohol and drugs at the age of 15 years and that it continued until his entry into the Charter Fairmount Institute on or about August 21, 1989.

(7) There was no evidence of social conditions which contributed to respondent's offense or conduct.

(8) Respondent produced evidence that he has met the conditions of his probation and that he completed a 28-day in-patient program for alcohol and drug abuse at the Charter Fairmount Institute. At the time of the hearing, respondent was gainfully employed and was meeting his commitments for child support. The record demonstrates, however, that he had made less than minimum efforts to pay his court ordered fines and penalties. Respondent has, moreover, successfully completed a Personal Computer Specialist program through Associated Business Careers. He has also engaged in an Atlantic Community College sponsored Job Connection program to assess his employability basic skills and to prepare him for the GED examination which he has failed to pass.

Having carefully considered all of the factors in N.J.S.A. 5:12-91d, and having given fair weight thereto, I am not persuaded that respondent has met his statutory burden of establishing his rehabilitation. He has not, nor will he complete his Court ordered probation period until October 13, 1991. In, addition, he has made less than minimum efforts to address and meet his obligations to pay the Court ordered fines and penalties imposed upon him. The fines for both convictions total more than

$1,100. Yet, in approximately one year, he has paid only $10 of his own earnings toward this obligation. The other $50 paid to the Court came from his mother.

I **CONCLUDE**, therefore, that respondent has failed to affirmatively establish his rehabilitation pursuant to N.J.S.A. 5:12-91d. Given more time under the present conditions and circumstances, respondent may be in the position to demonstrate rehabilitation.

ORDER

Accordingly, it is **ORDERED** that the casino hotel employee registration no 92401-40, issued to Drew M. Perry be and is hereby **REVOKED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

10 September 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

9/10/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

SEP 1 2 1990
DATE

Mailed to Parties:
Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Detective John Silver

For the Respondent:

Drew M. Perry

EXHIBIT LIST

For the Petitioner:

P-1 New Jersey State Police Investigation Report
P-2 New Jersey State Police Arrest Report
P-3 Summons/Complaint
P-4 Indictment #89-06-1516-A-CP
P-5 Judgment of Conviction
P-6 Atlantic City Police Department Investigation Report
P-7 Atlantic City Police Department Arrest Report
P-8 Complaint
P-9 Indictment #89-08-2333-A
P-10 Judgment of Conviction

For the Respondent:

R-1 Letter, dated March 8, 1990, from Atlantic Community College, Bonnie L. Peterson, instructor
R-2 Progress and Conduct Report, dated March 8, 1990, Crystal R. Brown, probation officer
R-3 Letter, dated February 26, 1990, from Jo Anne Schatz, social worker, Charter Fairmount Institute
R-4 Associated Business Careers Enrollment Agreement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-76
APPLICATION NO. 077361-21
OAL DOCKET NO. CCC 07627-89
ORDER NO. 90-43-3

APPLICATION OF LYNDA J. PETERSON a/k/a CAIRNES FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 October 31, 1990,

IT IS on this 7th day of November 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC-07627-89
AGENCY DKT. NO. 90-EA-76

CASINO CONTROL COMMISSION

LYNDA J. CAIRNES PETERSON,

Petitioner,

vs.

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

Respondent.

LYNDA J. CAIRNES PETERSON, petitioner, pro se

JAMES J. ARMSTRONG, Deputy Attorney General for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record closed: **AUGUST 17, 1990** Decided: **SEPTEMBER 7, 1990**

BEFORE **JOSEPH E. KANE**, ALJ:

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) on August 4, 1989 objecting to a casino employee license being issued to petitioner. The Division alleges that petitioner was convicted of a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) (hereinafter referred to as the Act) and that she lacks the requisite good character, honesty and integrity required for licensure.

PROCEDURAL HISTORY

The Division filed its letter of objection with the Commission on August 4, 1989. Petitioner requested a hearing on September 8, 1989 and on September 22, 1989 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on February 27, 1990 by Joseph F. Fidler, ALJ followed by a hearing which was held on August 17, 1990. The record was closed on

August 17, 1990.

ISSUES

1. Has petitioner been convicted of false swearing in the fourth degree, contrary to N.J.S.A. 2C:28-2a, which would be a disqualifier from licensure pursuant to sections 86c(1) and 90e of the Casino Control Act N.J.S.A. 5:12-1 et seq.

2. With reference in part to the petitioner's arrest record, does she possess the requisite good character, honesty and integrity for casino employee licensure, pursuant to sections 89b(2) and 90b of the Act?

3. Has the petitioner, if she has been convicted of an otherwise disqualifying offense, affirmatively established her rehabilitation, pursuant to Section 90h of the Act?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon testimony and documents proffered at the hearing, the following represents **FINDINGS OF FACT** in this matter.

Petitioner is 26 years old, married and lives with her husband and four children. At the time she was a teenager, she associated with the "wrong crowd" which resulted in several minor encounters with the criminal justice system. At the age of 15, she began dating and later lived with Allen Wilson. According to

petitioner, Mr. Wilson had been in trouble with the law since he was 13 and had spent time in a juvenile detention center. Her relationship was stable only for the first year, thereafter, when becoming intoxicated, Mr. Wilson would beat the petitioner to the point where at one time, she was hospitalized with a fractured jaw and concussion.

A. HAS PETITIONER BEEN CONVICTED OF AN OFFENSE WHICH WOULD DISQUALIFY HER FROM LICENSURE PURSUANT TO SECTION 86c(1) OF THE ACT.

Petitioner has been arrested and found guilty of three offenses. On August 24, 1984, petitioner pled guilty to false swearing, a violation of N.J.S.A. 2C:28-2(a). Although a crime of the fourth degree, Section 86c(1) specifically includes false swearing as one of the enumerated disqualifers. Section 86c(1) states:

> "The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L.1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented: ... N.J.S. 2C:28-1 et seq. (perjury and other falsification in official matters which constitute crimes of the second, third or fourth degree); ...".

I, THEREFORE, FIND that petitioner has been convicted of a crime which does disqualify her from licensure pursuant to

Section 86c(1) of the Act.

B. HAS PETITIONER DEMONSTRATED HER REHABILITATION BY CLEAR AND CONVINCING EVIDENCE PURSUANT TO SECTION 90h OF THE ACT.

Petitioner, although faced with an 86c(1) disqualifying offense, can nevertheless, overcome such a bar to her licensure if she is able to demonstrate by clear and convincing evidence that she has been rehabilitated pursuant to Section 90h of the Act. This section of the Casino Control Act evidences the intent on the part of the legislature to permit an applicant to demonstrate that rehabilitation has occurred and that the applicant is accordingly suitable for licensure by an industry which is strictly regulated. The eight enumerated factors which are to be considered in determining whether rehabilitation has been achieved are as follows:

1. The nature and duties of the position applied for.

The position applied for by the petitioner, that of a blackjack dealer, constitutes a challenge to her since the only job she has ever held has been that of a cashier in an Acme Supermarket and now in a Wawa Grocery Store. Petitioner has received a certificate from Professional Dealer's School and there is no objection to her qualifications filed by the Division. Under the circumstances of the statutory disqualifier as more fully set forth below, her conviction for false swearing

on August 24, 1984 does not pose a threat to the casino industry in the event petitioner is licensed and employed as a blackjack dealer.

2. The nature and seriousness of the offense or conduct.

Petitioner was charged and pled guilty to false swearing which is a crime of the fourth degree. She was sentenced to pay a penalty in the amount of $250, a $25 payment to the Violent Crimes Compensation Board, 75 hours of community service and two years probation. Considering the type and degree of the offense, the crime is not considered to be one of a serious nature.

3. The circumstances under which the offense or conduct occurred.

Petitioner had noticed for a period of time that Allen Wilson would return with items which obviously did not belong to him. When questioning him about the property, petitioner was met with abuse and threats of extreme violence should she call or otherwise inform law enforcement officials. Finally, early in 1984 Mr. Wilson burglarized the home of one of petitioner's neighbors for which she had great love and respect. When he refused to return the items, petitioner got up the courage to call the police and provide them with information regarding two burglaries in the neighborhood. As a result, petitioner agreed to act as a witness against Mr. Wilson who was later convicted of two of the neighborhood burglaries. Because petitioner had been untruthful concerning police inquiries in the past, she was also

charged with false swearing to which she entered a plea of guilty on August 24, 1984. Petitioner now found herself in a position where she was being charged with false swearing since, in the past, out of fear for her life, she had supplied the police officials with incorrect information.

4. The date of the offense or conduct.

Petitioner was charged with false swearing on April 17, 1984 and pled guilty on August 24, 1984.

5. The age of the applicant when the offense or conduct was committed.

Petitioner was 20 years old at the time of the offense and she is now 26 years old.

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

The offense of false swearing to which petitioner entered a guilty plea, has occurred only once in her life. There are two other convictions, as more fully set forth below, however, these offenses do not constitute statutory disqualifiers pursuant to Section 86c(1) of the Act. Except for a disorderly charge, petitioner has not been convicted of any offense since the April 1984 incident.

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

conduct.

The social conditions surrounding the offense mitigate heavily in petitioner's favor. Petitioner's conduct was brought about by fear that her boyfriend would inflict physical harm upon her.

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 removing herself from the influence of Mr. Wilson and the "old crowd" petitioner has demonstrated that she is a responsible individual. She coached children in the T-ball League for three years and coached women's basketball for one year. Petitioner, and her husband, recognized that it would be beneficial for petitioner to be away from her old friends who, for many years, had such a bad influence upon her. In the last year, petitioner with her husband and four children have moved to Egg Harbor Township, New Jersey. She has been working at a local Wawa for the last six months and apparently is well respected by her employer who often requests that she does overtime. Petitioner was encouraged to submit into evidence a letter from her current employer, however, she refused feeling that he would not want her to leave the store and that she did not want him to

be aware that she was attempting to seek employment in the casino industry. The letters presented on behalf of petitioner, P-1 and P-2 mirror petitioner's testimony that she is now a mature responsible mother of four who is now attempting to embark upon a new career.

I **FIND** that based upon the above facts, petitioner has demonstrated her rehabilitation by clear and convincing evidence. This conclusion takes into consideration the fact that I found petitioner to be a polite, sincere and believable individual.

C. DOES PETITIONER POSSESS THE REQUISITE GOOD CHARACTER, HONESTY AND INTEGRITY REQUIRED OF A LICENSE HOLDER BY SECTION 89b OF THE ACT.

Despite petitioner's conviction for false swearing, I **FIND** her to be a credible and honest individual. Her conviction was a result of her providing false information to the police, an act which was committed more out of fear for her own personal safety rather than because of any criminal motive. Petitioner has removed herself from the individuals who had such a deleterious effect on her life and now enjoys the support of a loving husband, the results of which are evident in her personality and lack of arrests for the last two years. Based upon these factors as well as those set forth in the rehabilitation analysis set forth above, I **FIND** that petitioner does possess the requisite good character, honesty and integrity required for licensure.

SUMMARY

I **FIND** that petitioner was found guilty of a statutory disqualifier pursuant to 86c(1) of the Act, that of false swearing in violation of N.J.S.A. 2C:28-2(a). I **FURTHER FIND** that petitioner has demonstrated by clear and convincing evidence her rehabilitation and her good character, honesty and integrity thus permitting her to hold a casino employee license. **IT IS SO ORDERED** this 7th day of September, 1990.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Sept. 7, 1990
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

9/11/90
DATE

CASINO CONTROL COMMISSION

OAL DKT. NO. CCC-07627-89

Mailed to Parties:
SEP 21 1990

SEP 21 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

pas

EXHIBITS

FOR PETITIONER:

P-1 Letter from Susan E. Little dated August 1, 1990;
P-2 Letter from Joan Apel dated August 16, 1990;

FOR RESPONDENT:

R-1 Investigative Summary Report dated May 30, 1989;
R-2 Atlantic County Indictment No. 0530-4-84-C;
R-3 Northfield Police Dept. Arrest Report dated 3/22/84;
R-4 Township of Hamilton Police Dept. Arrest Report dated 9/11/83;
R-5 Somers Point Police Dept. Arrest Report dated 9/2/83;
R-6 Northfield Police Dept. Arrest Report dated 5/18/84;
R-7 Personal History Disclosure Form-2A;

WITNESSES

FOR PETITIONER:

Lynda J. Cairnes Peterson
Jon Peterson

FOR RESPONDENT:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-194
APPLICATION NO. 077262-21
REGISTRATION NO. 049921-40
OAL DOCKET NO. CCC 00428-90
ORDER NO. 90-43-6

APPLICATION OF KAREN L. PHILLIPS
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 October 31, 1990,

IT IS on this 5th day of November 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

FILED

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 428-90
AGENCY DKT. NO. 89-EA-194

IN THE MATTER OF THE APPLICATION OF KAREN L. PHILLIPS FOR A CASINO EMPLOYEE LICENSE.

Karen L. Phillips, petitioner, pro se
Norma Stancil, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: August 13, 1990 Decided: September 17, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

The petitioner is registered with the Casino Control Commission (Commission). The petitioner permitted her casino employee license to lapse. A casino employee license permits a person to work on the casino floor. Petitioner applied to the Commission for a new casino employee license. The Division of Gaming Enforcement (Division), by letter to the Commission, dated October 31, 1989, objected to the relicensure of the petitioner on several grounds which were identified as issues to be determined at a plenary hearing.

ISSUES

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: theft by deception contrary to N.J.S.A. 2C:20-4, by improperly receiving unemployment benefits.

B. Whether petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).

C. Whether the petitioner possesses the requisite financial stability, integrity and responsibility, pursuant to N.J.S.A. 5:12-89b(1).

D. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

DISQUALIFICATION

At a plenary hearing conducted on August 13, 1990, pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 5:12-107, the State proved and the petitioner admitted that she received unemployment benefits to which she was not entitled. The uncontradicted evidence reveals that petitioner received approximately $984 of unemployment benefits in 1981 when she was employed at Spencer's Gifts and at the Head Start Program sponsored by Atlantic Human Resources, Inc. This constitutes theft by deception contrary to N.J.S.A. 2C:20-4 and 2 in the third degree because it exceeds $500.

Section 86c 1 of the Casino Control Act contains a list of crimes. If a person is convicted of any one of them, she is disqualified from obtaining a casino employee license, which permits a licensee to work on the casino floor. Third degree theft is on the list. Section 86g of the Act permits the Division to prove that criminal conduct occurred even if no prosecution was conducted by the State. I therefore **CONCLUDE** that the petitioner is disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86c 1.

REHABILITATION, CHARACTER AND FINANCIAL RESPONSIBILITY

An applicant faced with the existence of one or more section 86c(1) disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating her rehabilitation as provided by section 90h of the Act The factors which the Commission shall consider in determining the applicants rehabilitation are as follows: (1) The nature and duties of the position applied for; (2) The nature and seriousness of the offense or conduct; (3) The circumstances under which the offense or conduct occurred; (4) The date of the offense or conduct; (5) The age of the applicant when the offense or conduct

was committed; (6) Whether the offense or conduct was an isolated or repeated incident; (7) Any social conditions which may have contributed to the offense or conduct; (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.

(1) The petitioner has applied for a casino employee license as a casino teller. If licensed, she would be accountable to the public, and to the casino employing her, for the correct disposition of cash, checks, credits, or chips.

(2) The offense committed by the petitioner was not serious. She was not prosecuted for its commission. It was not a crime of violence. No person was injured by her actions. Unemployment benefit theft is one of the milder forms of white collar crime. In this case it is a third degree crime and carries a presumption with it that a first offender will not be incarcerated. N.J.S.A. 2C:44-1e. There is no question however, that it is a factor to be considered in licensing a person to handle cash or other similar items because it raises the question of honesty.

(3) (6) & (7) The petitioner was sent to Artic Avenue near Indiana Avenue in Atlantic City to live with her grandparents when she was 17 years old after it was discovered that she was pregnant. She did not finish high school. She recounted an alienated childhood and young adulthood of having babies, taking drugs and living on welfare. She was a recipient of Aid to Families with Dependent Children. She had a second child. Petitioner has always been a single parent and totally responsible for her two children. The County Welfare Agency, through its WIN program, trained the petitioner and found employment for her with Spencer Gifts and Project Head Start, operated by Atlantic Human Resources. The WIN program was designed to put welfare recipients to work. It was during this time that the petitioner collected the unemployment benefits to which she was not entitled. She acknowledges that she was wrong and made mistakes in her life.

(4) & (5) The offense occurred in 1981 when the petitioner was 30 years old. It was shortly after this offense was committed that the petitioner, who is now 39 years old, began to organize her life.

(8) Petitioner, working with a casino hotel registration, obtained employment at the Tropicana Hotel and Casino and was there from 1983 until she resigned in February 1989. While at Tropicana as a reservationist, the petitioner was very successful and highly regarded. She was reservationist of the month in April of 1984. She received a superior annual review in 1989, her last year of employment. She was chosen to participate in the Upward Mobility Program at Tropicana and successfully completed her course of studies there. In fact, it was her success in this program which inadvertently led to her resignation. She expected a promotion as a result of successfully completing the course. She was even offered a promotion, but the salary was misrepresented to her. This led to harsh words between her and her supervisor and as a result the supervisor felt their differences were irreconcilable. Petitioner was permitted to resign as an alternative to firing.

The petitioner has since been employed at Resorts where she is a reservationist for "high rollers." She earns approximately $16,000 per annum. She has been earning this sum for the last several years. It is not a large sum and as a result the petitioner has been unable to make much headway in paying off an outstanding debt to the New Jersey Education Assistance Authority. She has also failed to pay the fine of $160 imposed as a result of her collection of unemployment benefits. The $984 which she collected has been repaid. When she left the Tropicana after 5 years and 8 months, she was entitled to unemployment benefits. The Unemployment Division applied her benefits to the debt.

There is evidence in the record that the petitioner has been arrested 5 times. She explained these arrests satisfactorily. In 1974, she received a conditional discharge for possessing a small amount of marijuana and in 1975 she paid a $100 fine for possessing narcotic paraphernelia. This is consistent with her testimony that she formerly used drugs when a resident of Artic Avenue in Atlantic City (she described her neighborhood near Indiana Avenue as "Bad!").

The petitioner admitted on her application for casino licensure, although her FBI rap sheet fails to report it, that she was arrested for shoplifting in 1978. She explained that she inadvertently pocketed a package of cigarettes while shopping These three arrests are more than 10 years old and are not significant.

In 1980, the applicant was arrested in Ballys Park Place Casino Hotel, where she was employed, and charged with possession of cocaine. As a result, she was terminated from Ballys. She was later found not guilty of this charge. In 1987, the petitioner failed to appear for a traffic court hearing and was fined $30.

Nothing in her arrest record negates the petitioner's claim that she is rehabilitated or that she has acquired good character, honesty and integrity. Certainly nothing in the record supports a contention that she does not possess financial responsibility. The record merely supports her contention that she is poor.

The petitioner has been off of welfare for almost 10 years, thanks to the WIN program. From a pregnant, dope-smoking, teenage dropout, she has become a steady, hard working member of the casino work force. Her children are now 17 and 22. This is her time and opportunity to progress farther. As evidence that the petitioner is acquiring maturity and social skills, she introduced, among other things, a letter from the Deputy General Manager for Operations at New Jersey Transit recognizing her efforts to retain a bus route which the company had proposed discontinuing. The petitioner had prepared a petition, obtained signatures and presented the petition at a public meeting.

During the entire hearing, the petitioner presented herself in a truthful and forthright manner, although she was nervous and prone to overstatement. She has, nevertheless, an honest and open demeanor.

CONCLUSIONS

Based on the totality of the evidence presented, I **CONCLUDE** that the petitioner has affirmatively demonstrated her rehabilitation by clear and convincing evidence as required by N.J.S.A. 5:12-90h.

I further **CONCLUDE** that the petitioner has demonstrated by clear and convincing evidence that, although poor, she has the requisite financial stability, integrity and responsibility required by N.J.S.A. 5:12-89b(1).

I further **CONCLUDE** that the petitioner has demonstrated by clear and convincing evidence that she possesses the good character, honesty and integrity required by N.J.S.A. 5:12-89b(2).

DISPOSITION

Therefore it is **ORDERED** that the letter filed by the Division be **DISMISSED** and that the petitioner's application for licensure be **GRANTED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 17, 1990
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

9/17/90
DATE

Lisa Woodi
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 25 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Karen L. Phillips

For the Respondent:

Karen L. Phillips

EXHIBIT LIST

For the Petitioner:

P-1 Handwritten letter
P-2 Letter dated 5-14-90
P-3 Payment stub, dated 8-29-89
P-4 Payment stub, dated 7-30-90
P-5 Notice of Outstanding debt
P-6 Letter dated 5-13-84
P-7 Memo dated 11-3-88
P-8 Evaluation dated 9-27-87
P-9 Evaluation dated 9-27-88
P-10 Employee Complaint Form
P-11 Handwritten letter, dated 2-17-89

For the Respondent:

R-1 NJHEAA Printout
R-2 Atlantic Human Resources Claimant Benefit Statement
R-3 Spencer Gifts Claimant Benefit Statement
R-4 Record of Hearing
R-5 Demand for Refund
R-6 Certificate of Debt
R-7 Division of Unemployment and Disability Printout
R-8 Duplicate of R-7
R-9 FBI Report
R-10 Atlantic City Police Investigation Report
R-11 Atlantic City Arrest Report
R-12 N.J. State Police Investigation
R-13 State Police Property Report
R-14 NJ State Police Arrest Report
R-15 Cover Memo with Attachments
R-16 Personal History Disclosure
R-17 Personal History Disclosure

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-409
APPLICATION NO. 19371-21
OAL DOCKET NO. CCC 04023-89
ORDER NO. 90-41-7

APPLICATION OF RALPH M. PITTS TO
RENEW HIS CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 October 17, 1990,

IT IS on this 30th day of October 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4023-89

AGENCY DKT. NO. 89-EA-409

RALPH M. PITTS,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Guy S. Michael, Esq., for petitioner (Brown & Michael, attorneys)

James J. Armstrong, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: October 23, 1989 Decided: September 4, 1990

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

STATEMENT OF THE CASE

The petitioner seeks renewal of his casino employee license, which permits him to work in a licensed casino as a blackjack dealer and box person. By letter report to the Casino Control Commission dated March 30, 1989, the Division of Gaming Enforcement objected to the renewal, based primarily upon his alleged failure to disclose material information concerning his arrest record. These are the issues:

1. With specific reference to the petitioner's arrest on February 4, 1986, on charges of possession of a controlled dangerous substance (marijuana under 25 grams), comparable to N.J.S.A. 2C:35-10a(4), and possession of

drug paraphernalia, comparable to N.J.S.A. 2C:36-2, has the petitioner failed to reveal material facts and supplied untrue or misleading information pertaining to the qualification criteria, and if so, is he disqualified from licensure pursuant to section 86b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

2. Has the petitioner established by clear and convincing evidence that he possesses the good character, honesty and integrity required for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act.

PROCEDURAL HISTORY

On June 1, 1989, the Casino Control Commission transmitted this 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 telephone prehearing conference was held on August 18, 1989. The hearing was thereafter held as scheduled on October 23, 1989, and the record closed on that date. Issuance of this initial decision was delayed because of my heavy caseload, exacerbated by illness requiring my absence from the office for an extended period.

FINDINGS OF FACT

The material facts in this matter are essentially undisputed. The petitioner is 30 years old and he resides in the Atlantic City area. He holds casino employee license number 19371-21, originally issued by the Casino Control Commission on May 20, 1981.

According to the petitioner's employee license renewal application (Exhibit R-3) and the Division investigation report (Exhibit R-2), the petitioner was employed as a craps dealer at Caesar's Boardwalk Regency Casino between June 1980 and May 1984. He then worked as a craps dealer for a year at Trump's Castle. Following a short break from employment in the casino industry, the petitioner then worked for about a year at Trump's Plaza Casino. The petitioner has held his present employment as a craps dealer at

Trump's Castle for well over three years.

The incident which has given rise to the present matter concerns the petitioner's arrest on February 4, 1986, for possession of a controlled dangerous substance (marijuana under 25 grams) and possession of drug paraphernalia. These are offenses comparable to N.J.S.A. 2C:35-10a(4) and N.J.S.A. 2C:36-2, respectively. The petitioner was a passenger in a vehicle which was being driven by a friend. When the vehicle was parked on the shoulder of the Garden State Parkway, State Police troopers approached to investigate. A clear plastic bag containing marijuana was observed next to the petitioner. Marijuana cigarette rolling papers were also discovered. The petitioner was arrested and issued a complaint and summons for the foregoing charges; he was then released on his own recognizance pending a court appearance on March 4, 1986.

The petitioner testified that the marijuana and other paraphernalia were not his. Nevertheless, he claimed responsibility because he did not have a driver license and feared he would be unable to drive his friend's car if his friend were arrested. He was well aware that the marijuana was in the car prior to his arrest.

The petitioner stated that he did not obtain legel representation when he went to court. He was found guilty on March 18, 1986, in Berkely Township Municipal Court and was sentenced to a six-month probation on a conditional discharge (Exhibit R-2). The petitioner testified credibly that he does not remember too much about the court proceeding, but he understood that his record would be clean after he completed six months probation.

New Jersey State Police Detective Frank Gordan testified that he is assigned to the Division and he conducted a background investigation concerning the petitioner's renewal application. This investigation included a review of the information which the petitioner had provided on his application form, dated May 28, 1987 (Exhibit R-3). In response to questions number 6 and number 7, which require disclosure of an applicant's arrest and conviction record, the petitioner had indicated he had no arrest and conviction record by checking the "no" boxes.

Detective Gordan had received a report from the FBI which listed the petitioner's arrest on February 4, 1986. Detective Gordan conducted an interview by telephone with the petitioner on September 14, 1988. He testified that he asked the petitioner if he had ever been arrested and the petitioner said "no." The Detective then read questions number 6 and number 7 to the petitioner and again asked him if he had been arrested. Again, the petitioner said "no." Then, the detective told the petitioner that he had an FBI report which listed the petitioner having been arrested on February 4, 1986. According to Detective Gordan, the petitioner again denied having been arrested. However, the detective then told the petitioner that he had in his possession a copy of the actual arrest and investigation report. At that point, the petitioner admitted the arrest.

Detective Gordan's testimony concerning this matter was sincere and credible. He had asked the petitioner if he understood questions number 6 and number 7. Significantly, it was Detective Gordan's testimony that the petitioner said he did understand the questions and that he understood that he did not need to disclose the arrest since the charges had been dropped because of the conditional discharge.

The petitioner's testimony was likewise sincere and credible. He stated his awareness of Division investigations and the strictness concerning providing information. It was the petitioner's believable testimony that he answered "no" when the detective asked if he had been arrested because he thought that "no" was the right answer.

The petitioner was not sure how many times the detective asked him if he had been arrested. However, he eventually admitted that he had been. He explained to the detective that he did not think that he had any record because he thought that the charges had been dropped. It was his understanding then that he did not need to disclose the arrest under that circumstance. It was the petitioner's believable testimony that he was not trying to deceive the detective. Having noted that he was never arrested before or after this incident, the petitioner stated that he didn't think the arrest would affect his renewal application if it had been disclosed.

Testifying on the respondent's behalf were Angelo Bianco and Jerry Florio. Mr. Bianco is a dual rated pit boss at Trump's Castle and he is the petitioner's direct

supervisor. He has known the petitioner for well over six years and considers him to be a good friend. Most important, Mr. Bianco trusts the petitioner.

Mr. Florio is a floor person at Trump's Castle. He has known the petitioner for over 25 years. He considers the petitioner to be a very good person; a person to be trusted. Both witnesses hold the petitioner in high regard.

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

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and license to establish by clear and convincing evidence his individual qualifications for licensure. Among these qualifications is the requirement that an applicant for a casino employee license demonstrate that he possesses the requisite good character, honesty and integrity for licensure, pursuant to sections 89b(2) and 90b of the Act.

Section 90e of the Act provides that a casino employee license shall be denied to any applicant who is disqualified on the basis of the criteria contained in section 86 of the Act. Section 86b provides that the Commission shall deny licensure to an applicant disqualified for failure to provide information required by the Act or requested by the Commission, or for failure of the applicant to reveal any fact material to qualification, or for the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria. An intentional nondisclosure, premised upon the belief of the applicant that licensure would be adversely affected by disclosure, is grounds for mandatory diqualification. However, it is well settled that an inadvertent or ignorant failure to make a dislosure will not warrant disqualification.

It is undisputed in this matter that the information concerning the petitioner's arrest and conviction record was material to his qualifications for licensure. It is further undisputed that the petitioner did not disclose in his employee licensure

renewal application his 1986 arrest and conviction. However, the undisputed facts in this matter also established that the petitioner mistakenly understood that he did not need to reveal his arrest and conviction because of the conditional discharge disposition. The petitioner had no intention of deceiving the Commission or the Division, and his failure to disclose the arrest and conviction was not committed intentionally or in disregard of the regulatory process. I so **CONCLUDE.** Thus, I further **CONCLUDE** that the petitioner is not disqualified from licensure pursuant to section 86b of the Act, in light of his ignorant failure to disclose material information.

The petitioner has no other record of arrests or convictions. He satisfactorily completed his probationary period pursuant to the conditional discharge. The petitioner has worked without adverse incident in the casino industry for a substantial time. He is respected by his supervisors who have expressed their trust in him. On the basis of the undisputed facts in this matter, I **CONCLUDE** 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. Therefore, I further **CONCLUDE** that the petitioner's application for renewal of his casino employee license should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Ralph M. Pitts for licensure renewal as a casino employee be **GRANTED.**

This recommended decision may be adopted, 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 4, 1990
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

9/5/90
DATE

Kim Wood
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 7 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

gjb

INVENTORY OF EXHIBITS

For the petitioner:

None

For the respondent:

R-1	New Jersey State Police investigation and arrest reports
R-2	Division of Gaming Enforcement investigation report
R-3	Renewal application

WITNESSES

For the petitioner:

Ralph M. Pitts
Angelo Bianco
Jerry Florio

For the respondent:

Frank Gordan

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-24
REGISTRATION NO. 084529-40
OAL DOCKET NO. CCC 6211-89
ORDER NO. 90-37-9

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

Complainant, :

v. :

TINA M. QUICK, :

Respondent. :

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 September 19, 1990,

IT IS on this 26th day of September 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the respondent's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Tina M. Quick 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: [signature]
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 06211-89
AGENCY DKT. NO. 90-24

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

Petitioner,

vs.

TINA M. QUICK,

Respondent.

R. LANE STEBBINS, Deputy Attorney General for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

TINA M. QUICK, respondent, pro se

Record Closed: JULY 6, 1990 Decided: JULY 23, 1990

OAL DKT. NO. CCC-6211-89

BEFORE **JOSEPH E. KANE**, ALJ:

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) objecting to the renewal of the casino employee registration #84529-40 issued to respondent. The Division alleges among other things that respondent committed acts which constitute a statutory disqualifier for licensure pursuant to N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:35-5 (possession of a controlled dangerous substance (cocaine) with intent to distribute).

PROCEDURAL HISTORY

The Division filed its complaint with the Commission on July 26, 1989. Respondent requested a hearing on August 2, 1989 and on August 15, 1989 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on December 21, 1989 by Edgar R. Holmes, ALJ followed by a hearing which was held on June 26, 1990. The record was closed on July 6, 1990.

ISSUES

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1) to

wit: N.J.S.A. 2C:35-5 (possession of a controlled dangerous substance (cocaine) with intent to distribute).

B. Whether respondent may demonstrate rehabilitation pursuant to section 91(d) of the Casino Control Act.

UNCONTESTED FACTS

Based upon testimony and documents proffered at the hearing, the following facts are neither contested nor in dispute. Therefore, these uncontested facts are hereby adopted as **FINDINGS OF FACT** in this matter.

Respondent is a 21 year old single female with one child who was issued a casino hotel registration #84529-40. She is currently unemployed and has never worked in the casino industry on a regular basis with the exception of a period of approximately one month, in March 1990 when she held the position of a parking lot cashier at Bally's Hotel and Casino. Respondent's intention is to retain her casino registration in order that she may better her life and provide support to her only child. From the time of the incident in question until today, respondent resides at 61 North Illinois Avenue, Apartment 422-B, Atlantic City, New Jersey.

On September 6, 1987 at approximately 4:00 A.M., respondent was outside of her apartment with several acquaintences. The Atlantic City Police Department had received a report of drugs being sold in the neighborhood. When

responding to the call, respondent was observed running into the hallway of her apartment at which time the police saw her drop several bags of what was later identified as cocaine from her pockets. Thereafter, she was placed under arrest and charged with possession of a controlled dangerous substance; possession of a controlled dangerous substance at or near school property; possession of a controlled dangerous substance with intent to distribute; distribution of a controlled dangerous substance at or near school property. The controlled dangerous substance set forth in the indictment consisted of thirteen bags of cocaine. On April 26, 1988 respondent entered a plea of guilty to one count of possession of a controlled dangerous substance with intent to distribute in violation of N.J.S.A. 2C:35-5. She received three years probation and was ordered to pay $30.00 to the Violent Crimes Compensation Board, $50.00 lab fee and $1,000.00 DERD. These penalties are to be paid during the period of probation.

Although petitioner admitted entering a plea of guilty on February 8, 1988 she maintained her innocence throughout the entire hearing. She contended that at the time of her arrest she was asked to take the fall by other individuals who insisted that they would pay her to admit to owning the drugs and that if she did not, serious harm could befall her. Respondent's mother corroborated her daughter's story by indicating that she was present when these unnamed individuals threatened her daughter. Respondent proffered no other evidence to support her theory that she had entered an involuntary plea of guilty out of duress and fear for her own safety.

At the time of her arrest, petitioner described her

neighborhood as one in which drugs were all pervasive. This a neighborhood where individuals are many times coerced into taking responsibility for possessing drugs rather than risk the wrath of the dealer. Being well aware of this environment, respondent's mother urged her to plead guilty even though she was convinced that her daughter had never dealt in drugs.

Although I can sympathize with respondent as to the reasons why she felt it was necessary to enter a plea of guilty I cannot, nevertheless, dismiss the fact that such a plea was entered and that respondent did not come forward with sufficient evidence to rebut the State's prima facie case of per se disqualification pursuant to section 86c(1) of the Act. Assuming as true respondent's argument, the fact still remains that the evidence presented by her was simply not sufficient so as to draw into question her guilty plea entered on February 8, 1988. The Superior Court, and not this tribunal, is the forum in which respondent could re-open her previously entered guilty plea. Unfortunately for her, this tribunal does not have the authority to draw into question or to otherwise overturn her plea. Respondent is precluded from litigating the facts upon which a previously adjudicated judgment of conviction and plea was based. See Matter of Tinnelli, 194 N.J. Super. 492, 498 (1984)

Accordingly, I **FIND** that respondent has been convicted of a statutory disqualifier pursuant to 86c(1) of the Act, that of possession of a controlled dangerous substance (cocaine) with intent to distribute, N.J.S.A. 2C:35-5. Respondent is thus precluded from retaining her hotel registration #84529-40.

A hotel registrant who is faced with one of the statutory disqualifiers set forth in section 86c(1) of the Act is

nevertheless afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating her rehabilitation. Section 91(d) of the Act sets forth eight specific criteria which are to be considered and evaluated in determining whether respondent has been rehabilitated. The specific eight factors 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 registrant or 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 program or the recommendation of persons who have or have had the applicant (registrant) under their supervision.

Respondent, on June 9, 1988 completed her Personal History Disclosure Form. On the top of page 8, question 9 the applicant is required to disclose, amongst other information, any arrests or convictions and the terms and conditions thereof. On the portion of the question dealing with convictions, respondent

checked yes, however, when asked to describe the offense she only filled in possession and not the entire charge that of possession with intent to distribute. Respondent agreed during the course of the hearing that this portion of the Personal History Disclosure Form was not complete. Additionally, on page 8, question 9 respondent indicated the disposition of the offense to be "dismissed". Such action on the part of the respondent although not significant, weighs against her claim of rehabilitation since she does not seem willing to face the nature and extent of her conviction.

Respondent offered little in the way of evidence of her rehabilitation. Since the date of the offense when she was 19, she is now 21, she has not worked except for brief employment with Bally's Hotel and Casino in the position of a parking lot cashier. This employment which began in February of 1990 concluded March 22, 1990 when she was fired for being late on several occasions. Respondent stated that the reason she was late was that she was tending to her sick child. As a result of her lack of employment since her conviction, she has been unable to pay much of the penalties ordered as a condition of her probation. She still owns $800.00 which, according to the terms of her probation, must be paid off within the three year probationary period which will conclude in April of 1991. Mitigating in respondent's favor is the fact that she had not been in trouble with the law prior to her arrest on September 6, 1987 and she has not been arrested or convicted of any offense since then. When asked what she has been doing to better her life she responded "taking care of my child and staying out of trouble".

Respondent's conviction for possession of a controlled dangerous substance (cocaine) with intent to distribute, N.J.S.A. 2c:35-5 is a most serious crime especially when committed within 1,000 feet of a school. Respondent has had just over two years to demonstrate rehabilitation during which time she has failed to better her life other than to stay out of trouble. I do not mean to downplay the fact that she has not been arrested or convicted of any offense since September 6, 1987, however, when considering the serious nature of her conviction against the evidence that she has not been able to accomplish any life skills such as retaining employment or furthering her career or education in the two years that have elapsed since her arrest, **I CONCLUDE** that respondent has failed to meet her burden of showing rehabilitation by clear and convincing evidence pursuant to section 91(d) of the Act. The mere passage of time, especially that of only two years, is not sufficient to demonstrate rehabilitation.

ORDER

Accordingly, for the reasons set forth above it is hereby **ORDERED** that respondent's hotel registration number 84529-40 is hereby **REVOKED.**

This recommended decision may be adopted, 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

OAL DKT. NO. CCC-6211-89

with N.J.S.A. 52:14B-10.

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

July 25, 1990
DATE

Joseph E. Kane
JOSEPH B. KANE, ALJ

Receipt Acknowledged:

7/30/90
DATE

Lyn Woody
CASINO CONTROL COMMISSION

JUL 31 1990
DATE

Mailed to Party Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

pas

OAL DKT. NO. CCC-06211-89

EXHIBITS

FOR PETITIONER:

P-1 PERSONAL HISTORY DISCLOSURE FORM

P-2 ATLANTIC CITY POLICE DEPARTMENT INVESTIGATION REPORT

P-3 ATLANTIC COUNTY INDICTMENT #87-11-2299C

P-4 JUDGMENT OF CONVICTION FOR INDICTMENT #87-11-2299C

FOR RESPONDENT:

None.

WITNESSES

FOR PETITIONER:

Tina M. Quick

FOR RESPONDENT:

Tina M. Quick

Joyce Quick

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-88
LICENSE NO. 058818-21
OAL DOCKET NO. CCC 7636-89
ORDER NO. 90-37-5

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF PEDRO L. RAMOS, JR.

ORDER

A hearing 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 September 19, 1990,

IT IS on this 27th day of November 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 7636-89
AGENCY DKT. NO. 90-EA-88

PEDRO L. RAMOS, JR.,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Respondent.

Pedro L. Ramos, Jr., the petitioner, pro se

Norma L. Stancil, Deputy Attorney General, for the respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: July 9, 1990 Decided: August 3, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Pedro L. Ramos, Jr., applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (casino count room supervisor), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division),

opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so he could be employed as a count room supervisor at the Showboat Hotel and Casino. By letter to the Commission, dated August 10, 1989, the Division objected to the petitioner's application for licensure as a count room supervisor, asserting that the petitioner had committed the offense of theft by deception in violation of N.J.S.A. 2C:20-4, which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on September 11, 1989, that there were questions concerning his qualification under the Casino Control Act and that he had the right to a hearing. By application dated September 27, 1989, which was received by the Commission on September 29, 1989, the petitioner requested a hearing. On October 2, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on October 5, 1989, 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 in the matter was held before me on February 8, 1990. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, theft by deception - third degree.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A.

5:12-89b(2) as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on July 9, 1990, at the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record closed.

FACTUAL DISCUSSION

(A) STIPULATED FACTS

The parties entered into a Stipulation of Facts (J-1) which provides as follows:

The matters involved in the above-captioned matter having been discussed by and among the parties involved, Robert J. DelTufo, Attorney General of New Jersey, Attorney for Respondent, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Norma L. Stancil, Deputy Attorney General, and Pedro L. Ramos, Jr., and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

(1) WHEREAS Petitioner, Pedro L. Ramos, presently holds casino employee license number 58818-21 issued by the Casino Control Commission on April 17, 1985.

(2) WHEREAS by letter dated December 18, 1987, the Division of Gaming Enforcement recommended that Petitioner's application for casino key employee license number 4032-11 be denied based on the allegation that Petitioner had committed the offense of Theft by Deception (Unemployment Fraud - Third Degree), N.J.S.A. 2C:20-4, between August 1982 and October 1982; and that Petitioner lacked the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2). The Letter of Recommendation is incorporated herein and attached hereto as Exhibit "A" (J-2).

(3) WHEREAS on July 14, 1988, a hearing was held by the Office of Administrative Law in reference to Petitioner's qualification for licensure as a casino key employee. On August 2, 1988, the record of hearing closed. On November 11, 1988, an Initial Decision was filed with the Casino Control Commission, in which Administrative Law Judge Law concluded that Petitioner had committed the offense of Theft by Deception (Third Degree), which disqualified him from licensure pursuant to N.J.S.A. 5:12-86(c)(1) and N.J.S.A. 5:12-86(g). Judge Law also concluded that Petitioner had established that he possessed the good character, honesty, and integrity required for licensure. A copy of the Initial Decision is incorporated herein and attached hereto as Exhibit "B" (J-3).

(4) WHEREAS, by Order dated April 6, 1989, the Casino Control Commission modified the Initial Decision to reject the finding of good character, concluding that in view of the determination of disqualification pursuant to N.J.S.A. 5:12-86c(1), no decision on this issue is necessary. The Casino Control Commission adopted the Initial Decision as modified and denied Petitioner's application for licensure as a casino key employee. A copy of the Order is incorporated herein and attached hereto as Exhibit "C" (J-4).

(5) WHEREAS, by Letter of Recommendation dated August 10, 1989, the Division of Gaming Enforcement recommended that Petitioner's 1988 Employee License Renewal Application be denied based upon the allegations set forth in paragraph (2), supra.

(6) WHEREAS, the parties recognize that the issue of disqualification pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g, as set forth in paragraph (2), supra, has been decided in a plenary hearing which resulted in Petitioner's disqualification from licensure as a casino key employee, and that this issue need not be re-litigated.

It is therefore agreed and stipulated by and between the parties hereto that:

1. The facts stated herein, supra, are true and did, in fact, occur.

2. The issues to be decided at the hearing scheduled on July 9, 1990 in reference to Petitioner's 1988 Employee License Renewal Application are whether Petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated in section 90b, and whether Petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

3. The Prehearing Order dated February 14, 1990 shall be amended to reflect the issues to be decided at the hearing as set forth herein.

As the Stipulation of Facts was entered into freely, knowingly, voluntarily and intelligently, I accepted the Stipulation of Facts and I **FIND** everything contained therein as **FACT.**

(B) UNDISPUTED FACTS

In his Initial Decision in CCC 1232-88 (J-3), Administrative Law Judge (ALJ) Law found as **FACT** that:

During the period August and October 1982, petitioner was in receipt of Unemployment Insurance Benefits (UIB) while he was employed by the Deerpark Baking Company, Hammonton, New Jersey. Petitioner was in receipt of six weekly UIB checks in an amount of $122.00 each during the period in which he was employed one to four days per week. Petitioner was subsequently cited for an UIB overpayment of $118 for the week ending March 9, 1985. As of July 7, 1988, petitioner's liability was as follows:

Principal		$ 850.00
Penalty		183.00
Interest		229.54
	Total	$1262.54
	Paid	612.00
	Balance	$ 650.54

While the Division of Unemployment and Disability Insurance claimed all benefits paid as an overpayment due to fraud, the petitioner was actually entitled to partial payments. If he had properly reported his part-time earnings, the overpayment would have been $574 (R-3).

ALJ Law found that the petitioner entered into a repayment agreement on April 16, 1987, to "refund the UIB overpayments, fines and interest in installment payments of $100 per month until the full claims against him were satisfied. Petitioner made payments of $100 in the months of April, May, June, September 1987 and February and March 1988" (J-3). On March 31, 1989, the petitioner entered into a second repayment agreement to repay the Division of Unemployment and Disability Insurance at a rate of $55.00 per month (P-6). The petitioner fully satisfied this debt on March 28, 1990 (P-5, P-7 & R-1). A Warrant For Satisfaction was entered in the Superior Court of New Jersey on April 24, 1990, and the previously issued judgment for debt was discharged (P-7).

ALJ Law found that:

> Petitioner's employment history shows that he was engaged in a variety of unskilled jobs, many of which were part-time or seasonal positions commencing on or about July 1979. Petitioner was employed as a porter by the Greate Bay Hotel and Casino, trading as the Sands, from July 1980 until March 1983. He was terminated from the Sands for tardiness and absenteeism. Petitioner's subsequent association with the casino industry occurred in May 1985, at which time he was employed at the Trump Castle Hotel and Casino as a hard count attendant. He received two written

> warnings while employed by Trump Castle, one of which was for tardiness and absenteeism. In March 1987, petitioner resigned from the Trump Castle to take a better paying position with the Showboat Hotel and Casino as a hard count attendant.
>
> In July 1987, petitioner was promoted to Dual Rate in which he performed supervisory duties two times per week in the Hard Count Department at the Showboat. Petitioner's employee performance appraisals with the Showboat shows one evaluation period where he was rated as "Fully Acceptable" and two where he had achieved a "Superior" status. [J-3]

Since that time, the petitioner has been promoted to be a full-time count room supervisor. He is responsible for approximately one-half million dollars a day on weekdays and approximately one million dollars a day on weekends.

At the time the petitioner collected unemployment benefits in 1982, he was 22 years of age. He had been unemployed for several months, and he was behind in paying his rent, car payment and child support obligation. In addition, his second wife had a baby during this six week period. The petitioner knew it was wrong to not report his part-time earnings, and he did report his employment to his local unemployment office in October 1982.

The petitioner was born in Brooklyn. At age 14, he moved to New Jersey with his mother and three sisters. He graduated from Vineland High School in 1979. In 1984, he completed training in microcomputers. He supports three children, and he is a responsible father. He participates in both basketball and softball leagues in Vineland. The petitioner was selected to be one of four persons to serve on a task force at the Showboat to establish better customer and employee relations.

The petitioner submitted four letters of recommendation in his behalf. The first, written by Mary Edwards, count room manager, Showboat Hotel and Casino, dated June 25, 1990, provides in pertinent part:

> I believe that Pedro truly regrets his mistake and at no time did he try to conceal the fact. I believe that everyone is entitled to make a mistake and this situation occurred quite some time ago. I personally feel that this incident has been held against Pedro long enough. He is attempting to make a nice career for himself but is being penalized for an incident that occurred many years ago.

I do not hesitate to add my highest recommendation to Pedro's qualifications as a Hard Count Supervisor. He has proved to be a reliable and competent employee. I have found Pedro to be an honest and trustworthy person.

I hope that you will extend to Pedro, every consideration in granting his licensure. He has truly developed into an excellent employee and is considered an asset to my Department. [P-1]

The second, written by Hector Suarez, investigator, Office of the Public Defender, provides in pertinent part:

. . . . I have known Mr. Ramos for over twenty years.

In those twenty years I have watched this young man grow into a reputable and good natured individual that he is. Moreover, I can state without any reservations that he is an honest and trustworthy person. He has many good qualities and has never involved himself with the wrong elements. I have also known him to be an exceptionally loving father to his children and a dedicated worker to his employers.

Finally, I am fully aware of the problem Mr. Ramos had with the Unemployment Division. Eventhough he may have used poor judgment in the handling of the situation, I am certain he fully regrets his actions and had no idea at the time his actions were questionable. Nevertheless, Mr. Ramos has assured me that he regrets same and will refrain from such behavior in the future. [P-2]

The third, written by David Acosta provides:

I have known Pedro Ramos for over ten years. I have known him to be a trustworthy honest person. I have known Pedro to be a contributing member of society. Pedro is a loving father who often gives to his children all he has.

More important, Pedro is a law abiding citizen. I am aware that Pedro used poor judgment when dealing with the Division of Unemployment. It is my understanding that this matter took place six (6) years ago. In my judgment, I know Pedro used poor judgment. He regrets this matter ever took place. To my knowledge, Pedro has been and continues to be a law abiding citizen.

I can sincerely say that Pedro is an honest person who is deserving of a favorable ruling. Pedro understands that it is a privilege to work in the casino industry. He also understands that the State is concern [sic] that dishonest individuals are kept away from the

> casino. The integrity of the industry and the State is called to question if dishonest individuals are allowed to work in the industry. Pedro is not a dishonest person, but a hard working father and a contributing member of this community. [P-3]

Finally, Fay Velasquez, wrote:

> I have known Pedro L. Ramos, Jr. for a period of three and a half years now. I have had the pleasure of working with Pedro for those years and find that he is one of the most honest people I know. He seems to have a true compassionate concern for others.
>
> I am aware of Pedros past problems with the Unemployment Division of this state, and feel he has become a matured and unstanding citizen since then. [sic]
>
> I give my highest recommendation to Pedro on both a professional level and a personal one as well. [P-4]

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. He admitted his mistake and expressed remorse. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that his misconduct was, in part, due to immaturity. I am also inclined to believe that it was the result of inexperience and the difficulty in dealing with his financial and family affairs. At the time the petitioner obtained the part-time job and failed to disclose this fact to his local unemployment office, he was in a difficult living arrangement. He had been unemployed for several months, he was behind in paying his rent, other bills, child support, and his second wife was about to have a baby. These factors converged upon the petitioner and impaired his judgment.

As the above facts are undisputed, I **FIND** all of the above as **FACT.**

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . . .
>
> N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);
>
> . . . .
>
> g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> . . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this

section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

e. 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.

. . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception (third degree), which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends, by means of section 86g, that the petitioner's failure to report his part-time employment to his local unemployment office and his receipt of full unemployment benefits constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:20-4, Theft by deception, provides:

> A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:
>
> a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

This statute has been held applicable where one wrongfully receives unemployment benefits. In State v. Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

> As we read the trial judge's findings, defendant knowingly mispresented his employment status to obtain money "under pretense that he is . . . out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.1 It is not necessary to prove a "corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super. 137, 141-143 (App. Div.), certif. den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked - or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

The Division established, and the petitioner admitted during his testimony, that he knowingly received unemployment benefits to which he was not entitled. In addition, ALJ Law found in a prior hearing that the petitioner had committed the offense of theft by deception (third degree) and concluded that the petitioner was disqualified from key employee licensure pursuant to section 86c(1) and 86g (J-3). This finding and conclusion was adopted by the Commission on April 6, 1988 (J-4). Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

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[1] N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

(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 by affirmatively demonstrating his 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 or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the applicant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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.

In regard to the first criterion, Mr. Ramos is a casino licensee and is employed as a count room supervisor. As such, he does not have direct responsibilities for actual gaming activities and does not come in contact with casino patrons. He is involved in supervising the counting of money which requires a person of honesty and integrity.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception (third degree), over a six week period while not employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The petitioner had been unemployed for several months. He was behind in paying his rent, other bills and child support. His second wife was about to have a baby and he secured a part-time, seasonal job. He was simply concerned with providing for his family in a time of crisis. These circumstances converged upon the petitioner and impaired his judgment. Accordingly, the totality of the circumstances underlying the incident tend to mitigate somewhat the seriousness of his offense.

Fourth, the petitioner's misconduct occurred in a six-week period from the end of August 1982 until the beginning of October 1982, when it ceased.

Fifth, the petitioner was 22 years old at the time of the first offense. I believe immaturity was a factor in this case. The petitioner believes he has learned with maturity and such conduct will not occur again. He is now a responsible, productive member of society. In addition, it is clear that the underlying circumstances affected the petitioner's ability to deal responsibly with the problem at that time.

Sixth, the petitioner's misconduct was isolated in nature. He has not committed any other violations of the criminal laws.

Seventh, because of the underlying circumstances, the petitioner was only concerned with paying his bills in order to provide for his family. His family's security and his financial situation were major concerns. Because of his youthfulness, he was unaware of other alternatives which he could have pursued.

Eighth, the petitioner has made substantial rehabilitative efforts. He has made full restitution. The petitioner has been employed in the casino industry continuously since May 1985. His performance has been exemplary. He began as a hard count attendant, and he has advanced to the position of a count room supervisor. He has been considered for other promotions; however, his inability to obtain a key employee license has prevented his further advancement. He was selected to be one of four persons to serve on a task force at the Showboat to establish better customer and employee

relations. He has demonstrated that he has matured and has accepted responsibility. He is a responsible father who is concerned about raising his three children. The petitioner participates in local basketball and softball leagues. The petitioner has expressed remorse for, and has no intention of repeating, his misconduct. Accordingly, there is little likelihood, if any, of a repetition. Essentially, there is nothing more the petitioner could do to establish his rehabilitation.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 52:12-90b.

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr Ramos was required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

In November 1988, ALJ Law commented upon the petitioner's attributes of good character, honesty and integrity. At that time, ALJ Law stated:

> It is apparent that petitioner has matured with the passage of time and by assuming more than routine responsibilities in his position as a supervisor in the Showboat's Hard Count Department. Petitioner's performance as a "superior" employee as reflected on two of three Employee Performance Appraisals, speaks to a change in his employment behavior of the past where he was terminated

> for tardiness and absenteeism. Petitioner is now considered a very dependable worker who completes all job assignments with the utmost accuracy and thoroughness and is a valuable employee with good problem solving abilities. Initial Decision at 7-8.

Based upon these observations, ALJ Law concluded that the petitioner had demonstrated at that time, by clear and convincing evidence, that he did possess the requisite good character, honesty and integrity required for licensure as a casino key employee. The Commission, however, elected not to make a finding on this issue in view of the disqualification established pursuant to N.J.S.A. 5:12-86c(1).

Nothing has changed since ALJ Law made his finding of good character, honesty and integrity in November 1988. If anything, with the further passage of time, the petitioner has further been able to demonstrate his rehabilitation and good character, honesty and integrity. It is readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for his misconduct, regained control over his behavior, performed admirably within the casino industry during the past five years, is a responsible parent and has become a respected member of his community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Ramos is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Pedro L. Ramos, Jr. for the renewal of a casino employee license be **GRANTED.**

This recommended decision may be adopted, 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 3, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

8/7/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 9 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

Joint Exhibits:

J-1 Stipulation of Facts

J-2 Division of Gaming Enforcement letter of objection, dated December 18, 1987

J-3 Initial Decision in OAL DKT. No. CCC 1232-88, decided November 4, 1988

J-4 Order of the Casino Control Commission in OAL DKT. NO. CCC 1232-88, dated April 6, 1988

For the Petitioner:

P-1 Letter of Mary Edwards, count room manager, Showboat Hotel and Casino, dated June 25, 1990

P-2 Letter of Investigator Hector Suarez, Office of the Public Defender

P-3 Letter of David Acosta

P-4 Letter of Jay Velasquez

P-5 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance letter of satisfaction of debt, dated March 28, 1990

P-6 State of New Jersey, Department of Labor, Division of Unemployment and Disability Issuance installment agreement, dated March 31, 1989

P-7 Warrant for Satisfaction, filed April 24, 1990

For the Respondent:

R-1 State of New Jersey, Department of Labor LOOPS Claimant Inquiry and Refund Inquiry, dated July 5, 1990

R-2 Petitioner's Employee License Renewal Application

R-3 Memorandum of Walter A. Reilly, dated July 6, 1990

WITNESSES

For the Petitioner:

Pedro L. Ramos, Jr., the petitioner

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-288
LICENSE NO. 075739-22
REGISTRATION NO. 081101-40
OAL DOCKET NO. CCC 08848-89
ORDER NO. 90-38-8

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

Complainant,

v.

DANIEL RIVERA,

Respondent.

ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of September 26, 1990,

IT IS on this 27th day of November 1990, ORDERED that the initial decision is modified as follows:

In addition to revoking the casino employee license of Daniel Rivera, the Commission also revokes his casino hotel employee registration

IT IS FURTHER ORDERED that the respondent's casino employee license and casino hotel employee registration are revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8848-89

AGENCY DKT. NO. 89-288

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

v.

DANIEL RIVERA,
Respondent.

James J. Armstrong, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Daniel Rivera, respondent, pro se

Record Closed: July 12, 1990 Decided: August 17, 1990

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

This matter concerns the complaint filed with the Casino Control Commission (Commission) on March 28, 1989, seeking revocation of the respondent's casino employee license. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on November 17, 1989, 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 23, 1990, and at that time the parties agreed the issues in this matter are:

A. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c, because he is alleged to have committed a violation of N.J.S.A. 2C:20-3(a).

B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

The hearing in this matter took place on July 12, 1990, at the Absecon City Hall in Absecon, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** that the facts in this matter are not in dispute.

Mr. Rivera, while employed as a coffee shop cashier by the Showboat Hotel and Casino (Showboat), stole $100 from his cash register on February 11, 1989 (P-1).

During the investigation, Mr. Rivera admitted that he took the $100, and on March 7, 1989, he pled guilty to a violation of N.J.S.A. 2C:20-3 (P-2). He was fined $25, and was assessed $25 in court costs and $30 for the Violent Crimes Compensation Board (P-2). Mr. Rivera paid the $80.

On his own behalf, Mr. Rivera stated that at the time of this incident he was 24 years old. He had recently moved to the Atlantic City area from his home in New York. Mr. Rivera stated that a short time before the incident, his roommate had left their apartment and that he had a substantial increase in his living expenses. One of his co-workers was stealing money from the cash register without being discovered and this co-worker told Mr. Rivera how to steal. Mr. Rivera stated that he only stole money on one occasion, and this occurred when the preceding cashier had left $100 in the cash register. According to Mr. Rivera, he took the money because he was in debt and did not know how he could pay all of his bills. After he took the money, Mr. Rivera was scared. He felt that he would be caught even though he knew that at least initially the blame for the missing $100 would be placed on the preceding cashier.

After his employment was terminated by Showboat, Mr. Rivera worked for a short time for Harrah's Marina Hotel Casino as a busboy. He left this position for a better paying position with TropWorld Casino and Entertainment Resort (TropWorld). He was employed for a short time by TropWorld as a public area attendant, and he quit this job because he disliked the work hours. Currently, the respondent has a full-time clerical position with Macy's Department Store (Macy's) and he works three nights and weekends as a cashier for Friendly Restaurant (Friendly).

According to Mr. Rivera, he now has a new apartment with several new roommates. Mr. Rivera stated that he no longer is in debt, that he has learned his lesson, and is now doing all right.

On behalf of the Division, Deputy Attorney General James J. Armstrong argued that the respondent had not presented enough evidence to outweigh the seriousness of the offense and 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. Further, Mr. Armstrong argued that because of the criminal offense, Mr. Rivera cannot show by clear and convincing evidence his good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

Mr. Rivera submitted several letters relating to his good character, honesty and integrity (R-1, R-2, R-3). The first letter is from Bonnie Herbein, the respondent's supervisor at Macy's. In her letter, Ms. Herbein stated that Mr. Rivera has been employed by Macy's for four months, that he is an exemplary employee—punctual, courteous, honest, helpful and conscientious, and that he is due for a promotion (R-1). The next letter is from Thelma Bettian, a manager at Dynamic Maintenance at the Sears-Hamilton Mall. In her letter, Ms. Bettian stated that Mr. Rivera was employed by the company between August 1989 and February 1990, that he was a dependable and trustworthy employee and that the company was sorry to lose his services (R-2). The last letter is from Elsa C. Pansa, assistant manager of Friendly. In her letter, Ms. Pansa stated that Mr. Rivera has worked for the restaurant for ten months, and that he is a reliable and responsible employee (R-3).

CONCLUSIONS OF LAW

The first issue in this matter is whether Mr. Rivera's criminal activity renders his continued licensure inimical to the policy of the Casino Control Act. In order to make

this determination, it is necessary to consider the circumstances surrounding the criminal offense as well as the respondent's prior and subsequent conduct, i.e., his rehabilitation. Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985). In order to make a determination relating to inimicality, it is appropriate to consider the following criteria set forth for rehabilitation in N.J.S.A. 5:12-90h:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

Mr. Rivera grew up in New York and he left school after he had completed the eleventh grade. Since then, he has taken some business courses. While he lived in New York, he was unemployed. After moving to Atlantic City, he got his first job working for a 7-11 Store. He left this job for the position with Showboat. Mr. Rivera has no criminal record prior to or since the 1989 incident.

As a cashier, Mr. Rivera had a responsible position and when he got into financial difficulties he stole from the casino. This was an isolated offense. In the approximate one and one-half years since this incident, Mr. Rivera has not changed his life style; however, he has been able to stay out of financial difficulties by holding two

positions. Based on the facts presented, I **CONCLUDE** that Mr. Rivera has not shown rehabilitation. Mr. Rivera was a mature person when the offense occurred. His job with the Showboat put him into contact with casino patrons and he was responsible for the proper handling of casino monies. The fact that he was in financial difficulty when he stole the casino money does not excuse the offense and Mr. Rivera did not present any testimony to show that he would not consider such action in the future if he again got into debt. Therefore, I **CONCLUDE** that his continued licensure would be inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c.

The second issue is whether the respondent has established his good character, honesty and integrity by clear and convincing evidence. Although Mr. Rivera has had a good employment record since his termination by Showboat, the offense he committed was a serious one which directly related to his reliability, honesty and integrity as a casino employee. Since only a short period of time has elapsed since this criminal conduct, I **CONCLUDE** that Mr. Rivera cannot show at this time that he is a person of good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

Therefore, I **ORDER** that the casino employee license of the respondent be **REVOKED.**

This recommended decision may be adopted, 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 17, 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

8/20/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 22 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

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APPENDIX

Exhibits Introduced Into Evidence

For the Petitioner:

P-1 Investigation report of the New Jersey State Police regarding an incident involving Daniel Rivera

P-2 A complaint filed in the Atlantic City Municipal Court against Daniel Rivera

For the Respondent:

R-1 Letter from Bonnie Herbein, dated July 10, 1990

R-2 Letter from Thelma Bettian, dated July 11, 1990

R-3 Letter from Elsa C. Pansa, dated July 8, 1990

WITNESSES

For the Petitioner:

None

For the Respondent:

Daniel Rivera

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-157
REGISTRATION NO. 06296-40
OAL DOCKET NO. CCC 09405-89
ORDER NO. 90-39-9

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

Complainant,

v.

RAUL A. ROMAN,

Respondent.

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; and the Commission having considered the entire record of these proceedings at its public meeting of October 3, 1990,

IT IS on this 8th of November 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Raul Roman is permitted to retain his casino hotel employee registration substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9405-89
AGENCY DKT. NO. 90-157

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RAUL A. ROMAN,
Respondent.

Nancy P. Scharff, Deputy Attorney General, on behalf of petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Julio L. Mendez, Esq., on behalf of respondent (Velez & Mendez, attorneys)

Record Closed: July 19, 1990 Decided: August 16, 1990

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 hotel employee registration 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 questions presented are whether respondent can establish that he has been rehabilitated pursuant to N.J.S.A. 5:12-91d, in light of his conviction for aggravated assault, N.J.S.A. 2C:12-1b(1), an automatic disqualification pursuant to N.J.S.A. 5:12-86c(1).

The facts are either stipulated or undisputed. Respondent was indicted in Atlantic County in May 1986 on charges of possessing a weapon, N.J.S.A. 2C:39-5(d); possession of a weapon for unlawful purposes, N.J.S.A. 2C:39-4; aggravated assault, N.J.S.A. 2C:12-1b(1); aggravated assault, N.J.S.A. 2C:12-1b(2); and resisting arrest, N.J.S.A. 2C:29-2a(1). In September 1986, respondent pled guilty to the charge of aggravated assault, N.J.S.A. 2C:12-1b(1), amended to a crime of the third degree, and the remaining charges were dismissed. He was sentenced to two years' probation, and fined.

The incident which gave rise to this offense was a stabbing of Raul Zamorano, respondent's adult son. Respondent testified that at the time of the incident he was separating from his girlfriend, Mr. Zamorano's mother. He returned home from work that evening and was drunk. His son began an argument with him which led to a fight. Respondent testified that he lifted a kitchen knife and accidentally cut his son who required five stitches. An affidavit submitted by Mr. Zamorano in June 1986 in connection with the criminal matter indicates that he too was drunk on the night in question and that he actually started the fight with his father.

Respondent testified that he also had some involvement with the police between 1967 and 1976, but that those incidents were mainly domestic disputes with his former girlfriend. He testified that since 1976 he has only been arrested one time, as a result of this incident involving his son.

Respondent is 45 years old. He testified that since his separation and remarriage two years ago, he has given up drinking and his main focus is work. He has been employed by Bally's as a steward supervisor since 1979 and has had no difficulties on the job. He has never missed a day's work. Respondent testified that he paid the fine arising out of the criminal matter and finished his probation.

John L. Druid has been employed by Bally's for 12 years and is the executive steward for food and beverages. He has known respondent personally for 20 years and in the last 10 years has been his direct supervisor. Mr. Druid testified that respondent is one of his best employees and is well respected amongst his peers. He has never had a problem with him.

Respondent also submitted an additional letter of recommendation from Sam Ran, manager of public areas, and a petition signed by co-workers and people under

his charge, attesting that he is an upstanding individual. This is the substance of the record.

Respondent has established his rehabilitation. Though he had some involvement with law enforcement prior to 1976, he explained those incidents credibly as mainly domestic disputes. Importantly, from 1976 until the present time, he has been involved in only one incident which, though serious, occurred when the family unit was dissolving. Respondent pled guilty to one count of the indictment brought against him, he completed his probation, paid his fine, and appears truly remorseful about the incident. He has an exemplary employment record over a ten-year period.

Based on the foregoing, it is my conclusion that petitioner has established that respondent committed a disqualifying offense, but that respondent has also established rehabilitation. It is **ORDERED** that he be permitted to retain his license and that this complaint be dismissed.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

8/16/90
DATE

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

8/17/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 22 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

For petitioner:

P-1 Indictment No. 86-05-0992-D

P-2 Complaint filed in Atlantic City Municipal Court against Paul Roman

P-3 Written statement of Raul A. Roman

For respondent:

R-1 Petition of Raul A. Roman's co-workers

R-2 Letter from Sam Ran

R-3 Letter from John L. Druid, dated December 5, 1989

WITNESSES

For respondent:

Raul A. Roman
John L. David

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-162
REGISTRATION NO. 90264-40
OAL DOCKET NO. CCC 09492-89
ORDER NO. 90-45-12

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

Complainant,

v.

NATHANIEL T. ROSS,

Respondent.

ORDER

A hearing 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; and the Commission having considered the entire record of these proceedings at its public meeting of November 14, 1990,

IT IS on this 11th day of December 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Nathaniel T. Ross is permitted to retain his casino hotel employee registration substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

TRANSCRIPT
ORAL INITIAL DECISION
STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DKT. NO. CCC 9492-89
AGENCY DKT. NO. 90-162

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,
Petitioner,
v.
NATHANIEL TYRONE ROSS,
Respondent.

Norma Stancil, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Nathaniel Tyrone Ross, respondent, *pro se*

Record Closed: August 2, 1990 Decided: August 2, 1990

This is a transcript of the administrative law judge's oral initial decision rendered pursuant to ***N.J.A.C.*** 1:1-18.2.

BEFORE **RICHARD J. MURPHY,** ALJ:

Statement of the Case,
Procedural History and Issues

The Division of Gaming Enforcement filed a complaint against Nathaniel Tyrone Ross with the Casino Control Commission, seeking to revoke his casino.hotel

employee registration because of his indictment, and later his plea to drug-related charges. Mr. Ross does not dispute those charges and does not dispute that those charges are disqualifying under *N.J.S.A.* 5:12-86c(1).

The issues to be resolved are:

Number One, whether the conduct to which Mr. Ross pled guilty; namely, merged offenses of possession and possession with intent to distribute, as well as distribution to a juvenile, of cocaine. (And, also, I believe there was included the offense of possession of marijuana) constitute disqualifying offenses under *N.J.S.A.* 5:12-86c(1).

The second issue is whether, notwithstanding that disqualification, Mr. Ross, has affirmatively demonstrated rehabilitation within the meaning of *N.J.S.A.* 5:12-91d.

The last issue, if we need to reach it, is whether notwithstanding the disqualification, and further notwithstanding his inability to show rehabilitation, grounds exist to allow or require the Commission to waive the disqualification. In this instance, because of compelling circumstances, and in the interest of justice.

Factual Discussion and Findings

In terms of the factual discussion, and findings of fact in this case, there is no dispute as to the offense.

Let me just lay out a little background:

Mr. Ross holds casino employee registration number 90264-60. He has been employed at the TropWorld, in the records department, since November of 1988.

The offense, which is his only criminal offense, took place in 1987. The indictment, in particular, charged him with possession of a controlled dangerous substance in the form of cocaine, possession of cocaine with intent to distribute, and distribution of a controlled dangerous substance to a juvenile, in violation of *N.J.S.A.* 2C:35, sections five, eight and ten, respectively.

On October 31, 1988, Mr. Ross retracted a plea of guilty to the indictments charging possession, and the charges of possession with intent to distribute was merged: he was found guilty of that merged offense, as well as distribution to a juvenile.

Mr. Ross has explained that this offense was only his second use of cocaine. He states that he was not a cocaine addict or addicted to any drugs. He also states that he was using cocaine, probably, as a result or a desire to be socially accepted, and be "in" with the right crowd. And at the time of the offense he was only twenty-one years of age; he's now twenty-four. He also states that he obtained this cocaine in Philadelphia with the assistance, (and partially at the suggestion) of a juvenile acquaintance of his, and had the juvenile hold the drug for his later use. He denies any kind of distribution in the sense of a sale of that drug to a juvenile. This statement does not conflict with police statements, and other statements taken at the scene, and the subsequent investigation in this matter.

There is no dispute that he did plead guilty to the merged first and second count and the third count and was given two years probation, a $1,000 drug enforcement demand reduction fee, six months loss of driving privileges, seven days imprisonment, with credit for time served, and $30 in Violent Crimes Compensation Board payments.

There is no dispute as to any of the above facts surrounding the criminal conviction which, as I indicated, was his first, (and I hope his last).

Essentially, Mr. Ross maintains that he, to quote his phrase, "messed up in the past," and feels that he has learned a lot, especially from seven days of incarceration, and has made an effort to extricate himself and move himself away from the drug temptations of Atlantic City. He now lives in Brigantine and is currently holding two jobs.

Counsel for the Division points out that respondent has not yet fully complied with the terms of his probation, either by serving the full-time or by making all of the required payments. Mr. Ross indicates that he is supporting himself, although he doesn't have any dependents in the form of spouse, children or any relatives. He has rental expenses and other expenses, and has elected to pay some of his living expenses before he pays the fees required as part of his sentence, which I note as part of the record.

Mr. Ross states, and there is no evidence to the contrary that, he no longer uses cocaine or marijuana. He did not attend any treatment programs in connection with his conviction, which was not recommended as part of his sentence, or required as a part of his judgment of conviction by the judge. He has no past or subsequent record of arrest or convictions, prior to this.

In terms of the juvenile, he indicates they were close friends, and they were "fishing buddies." (to use his phrase again), and on one occasion while fishing, he tried cocaine at his friend's suggestion, and then went on from there.

He has received his high school diploma, briefly attended Salem Community College, but chose not to pursue that. He has worked in the casino industry, since 1988. He has submitted a number of documents from Tropworld Casino and Entertainment Resort, including a letter from Lilly Hoffman, who is the senior clerk in the records department, who said, "in the records retention office, I don't know what I would do without him." He also submitted a non-management achievement evaluation form, dated November 25, 1988, which states "Nate is a very professional person and is extremely polite. He informs me, and keeps up his work. And I also note his great communication skills."

Other review performances in March of 1989 found him to be -- found his work performance to be -- outstanding or highly satisfactory, in virtually all areas. A Letter dated July 13, 1990, from casino employees, Daniel Marios, and Holly Tozer, stated they are co-workers of Nathaniel Ross, and that he is responsible, dependable, and has a good attitude. In the letter dated April 20, 1990, Dean A. Woods, an analyst, recommends also indicates, Mr. Ross has made the Department what it is today, and is a very valued employee who realizes his mistakes made in the past. In a letter dated, April 23, 1990, to me, Thomas Karlan, assistant support manager, also, attests as to -- or shall I just say, states, because it is not under oath -- Mr. Ross has been a reliable and dedicated employee, and he has never had any problems at work. I also note for the record, that Mr. Ross was nominated in January of 1990, as employee of the month by TropWorld, based on outstanding job performance and dedicated service to TropWorld Casino and the Entertainment Resort.

Mr. Ross has also submitted evidence of his employment or, shall I say, his dual employment, counting TropWorld and also Shop N Bag.

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There's no dispute as to these facts above and I make that finding.

Legal Discussion and Conclusion

The terms of the legal discussion and conclusion, as I stated before, the issues are, first of all, is he disqualified? My conclusion on that score is that he is disqualified by virtue of his guilty plea to the possession and distribution offenses. I don't think there's any issue as to this and I do think this is something automatically qualifying under *N.J.S.A.* 5:12-86c(1).

The next issue to be addressed (and I believe in this case at the dispositive issue), is that of rehabilitation. The registrant has the burden in this instance and in all instances of affirmatively demonstrating rehabilitation.

Eight factors are to be considered. As I go through them, I will make reach conclusion as to each one.

The first factor under *N.J.S.A.* 5:12-91d, concerns the nature and duties of the position, and Mr. Ross's position in the records department is a sensitive one which bears on the fiscal integrity, and business record keeping function of the casino's and therefore, is a sensitive position.

The second factor under the rehabilitation section, is the nature and seriousness of the offense or conduct. Certainly, the offense of possession of a controlled dangerous substance, especially cocaine, is recognized to be a highly serious offense. In this case it is aggravated and compounded by distributions to a minor, albeit with some mitigating circumstances. Those circumstances are the third factor to be considered.

Mr. Ross has testified today, and I believe quite credibly, but he was intentionally involved in this activity: primarily or maybe exclusively out of a desire to engage in a socially acceptable activity - to be one of the in-crowd. However, this was his first offense. He testifies that he is not an addict. There is no evidence that he is or was a addict. He also testified that he did not initiate the cocaine use, but was led into that by a younger friend. There is no evidence to the contrary submitted by the Division, and this story is consistent with police reports in evidence. There was no violence involved in this crime, and, at the time of the offense, there

was no evidence that Mr. Ross was impaired or under the influence of drugs. His friend was in possession of drugs, which he admits belonged to him.

As to the fourth and fifth factors the date of the offense was December 7, 1987, and Mr. Ross was twenty-one years of age at that time and he was not a juvenile. He's now twenty-four years of age. There is no prior criminal record, or subsequent criminal records. And I believe it is fair to describe this offense as an isolated incident, and not a pattern of some deeper and more regular, ongoing involvement in drug distribution, or any kind of criminal activity (factor six). It appears to me to be just a matter of bad judgment, and going along with friends and associates without really taking an independent look at yourself.

He doesn't cite any social conditions, which would be the seventh factor to be considered under the factors of rehabilitation, and I find there were none present, as I understand, that section. There are social factors, in the sense there is a lot of social pressure on people to become involved in the drug scene in Atlantic City, and I take note of that. But I don't think that's the sort of a social condition under that provision in terms of rehabilitation: respondent presents nothing in terms of poverty, or any social problem that might have contributed to offense.

In terms of rehabilitation, which is the eighth and final factor to be considered, I can consider any evidence of rehabilitation, including good conduct in prison, or community counseling, or psychiatric treatment received, acquisition or additional education, or -- rather academic, or vocational schooling, or successful participation in correctional work release programs, or recommendations. In this instance, we don't have any good conduct in prison, because the prison stay was a minimal one. There is no evidence of any further bad conduct in the community, although I will put on the record, Mr. Ross has been somewhat less than diligent in the fulfilling all terms of the sentence, which I believe, is something the Commission has to weigh. There is also no evidence of counseling, or psychiatric treatment required by the sentencing Judge, and these are not a factor in this case. Nor is additional academic or vocational schooling relevant. I would point to what I consider to be sufficient evidence submitted of excellent job performance and track records in the casino industry, which combined with his admission of the offense, (and I think contrite attitude toward it, and what I judge to be the very low likelihood of repetition of that conduct), constitute sufficient evidence of rehabilitation, when proif combined with the circumstances of the offense, his age at the time, and what I perceive as his

increasing maturity, and his status as a valued employee in the casino industry. Based on these facts, I'm going to find rehabilitation under 91d.

I **CONCLUDE**, that respondent has carried his burden under the Casino Control Act to that end. Having decided that he has proven rehabilitation, there is no reason to reach the issue of waiver. I do agree with Miss Stancil this is not appropriate case for waiver. But I believe also that waiver is not an issue I need to reach, because rehabilitation is present.

Disposition

It is **ORDRED** that the complaint against Nathaniel Tyrone Ross is **DISMISSED.**

This oral decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, who 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 oral decision shall become a final decision in accordance with *N.J.S.A.* 52:14B-10.

END OF TRANSCRIPT

I, Clair Talmage, certify that the foregoing is a true and accurate transcript, to the best of my ability, of Judge Richard J. Murphy's oral decision rendered in the above matter of August 2, 1990.

August 27, 1990
DATE

Clair Talmage
CLAIR TALMAGE

Receipt Acknowledged:

8/28/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 30 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

/ct

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-40
REGISTRATION NO. 065856-40
OAL DOCKET NO. CCC 06212-89
ORDER NO. 90-39-3

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

Complainant,

v.

LUIS ARTURO RUIZ,
a/k/a LUIS A. SANTIAGO,

Respondent.

AMENDED 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; and the Commission having considered the entire record of these proceedings at its public meeting of October 3, 1990,

IT IS on this 4th day of December 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the respondent is allowed to retain his registration substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6212-89
AGENCY DKT. NO. 90-40

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
LUIS ARTURO RUIZ,
A/K/A LUIS A. SANTIAGO,
Respondent.

James J. Armstrong, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Jeffrey D. Light, Esq., for respondent (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

Record Closed: July 26, 1990 Decided: August 16, 1990

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

By complaint filed on July 28, 1989 with the Casino Control Commission ("Commission"), the Division of Gaming Enforcement ("Division") sought revocation of Luis A. Ruiz' casino hotel employee registration. Mr. Ruiz requested a hearing on the proposed revocation and the matter was transferred to the Office of Administrative Law (OAL) as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Following transmittal to the OAL, a prehearing conference was held on December 21, 1989 before Administrative Law Judge Edgar R. Holmes. A prehearing order was issued by Judge Holmes on December 28, 1989. A hearing was held before

Administrative Law Judge Jeff S. Masin on June 26, 1990 at the Office of Administrative Law in Atlantic City. The record closed following transmittal of a copy of a transcript of a plea which Mr. Ruiz had entered in the Superior Court of New Jersey, Criminal Division-Atlantic County on March 16, 1987. This transcript was received by the Administrative Law Judge on July 20, 1990. Thereafter, on July 26, 1990 the attorney for respondent filed a letter closing statement concerning the plea. The record closed on July 26, 1990.

ISSUES

The prehearing order issued by Judge Holmes provided that the issues to be considered at the time of the hearing were whether the respondent had been convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c, specifically, whether he had been convicted of a violation of N.J.S.A. 24:21(a)(1). In addition, whether the evidence presented by Mr. Ruiz demonstrated rehabilitation from any disqualification, as permitted by N.J.S.A. 5:12-91(d). The prehearing order was amended to include the issue of whether, in the absence of sufficient proof to establish rehabilitation, the facts and circumstances demonstrated that the interests of justice and the policies of the Casino Control Act required that any disqualification otherwise appropriate be waived pursuant to the authority of the Commission contained at N.J.S.A. 5:12-91e.

EVIDENCE

The Division of Gaming Enforcement presented documentation in support of its allegations contained in the complaint that Mr. Ruiz had been convicted of violating the criminal laws of the State of New Jersey, specifically, an indictment, number 87-02-0232-C-I, which was returned by the Atlantic County Grand Jury against Mr. Ruiz and three other named defendants on February 10, 1987. This indictment charged that the respondents had engaged in various instances of possession of cocaine, possession with intent to distribute cocaine, conspiracy, and distribution of cocaine. The indictment contained numerous counts, but Mr. Ruiz was only named in the last four counts of the indictment, specifically counts 17, 18, 19 and 20. These counts charged respectively violations of N.J.S.A. 24:21-19a(1), distribution or sale of controlled dangerous substance; N.J.S.A. 24:21-24, conspiracy to distribute CDS; N.J.S.A. 24:21-19a(1), possession of CDS with intent to distribute and N.J.S.A. 24:21-20a(1), possession of CDS. Each of these charges dealt with a specific incident of October 31, 1986.

A transcript of proceedings with respect to a plea of guilty entered by Mr. Ruiz on March 16, 1987 before Honorable Robert Neustadter, J.S.C., was offered as evidence subsequent to the hearing with the consent of the parties. Mr. Ruiz entered a plea of guilty to count 17 of the indictment charging distribution of cocaine. According to his statement at the time of the plea, which is contained beginning at page three, Mr. Ruiz indicated that on the particular occasion on October 31, 1986 at which time he was alleged to have distributed cocaine to an undercover agent in Galloway Township, that he "gave a bag of cocaine to a Charley Rice and he gave it to undercover." Upon questioning by Judge Neustadter, Mr. Ruiz advised that he knew that the substance which he gave to Rice was cocaine, that he did not sell it, but just gave it to Rice, and that he did not know what Rice was going to do with it.

Based upon the plea of guilty entered to count 17 of the indictment and in accordance with the plea bargain which had been reached with the Atlantic County Prosecutor's Office, Mr. Ruiz was sentenced by Judge Neustadter on April 3, 1987 to 60 days in the Atlantic County jail, 18 months probation, with credit for two days served. In addition, he was fined $350, which was to be paid during the first year of probation and was required to pay $30 to the Violent Crimes Compensation Board. The sentence was to be served intermittently on specified days of each week and the respondent was released each week following service of the specified two days of incarceration each week. Judge Neustadter indicated in his reasons for sentencing that he considered the serious nature of the offense, but also the "defendant's clean record and good family background and his good work record up until this incident." He believed that the recommended sentence was "marginally acceptable for purposes of punishment, deterrence and rehabilitation and so as not to deprecate the seriousness of the crime of distribution of drugs."

Mr. Ruiz was called as a witness on behalf of the Division of Gaming Enforcement. Ruiz, who is also known in accordance with the common custom of Hispanics as Luis Arturo Ruiz Santiago, is 37 years old and a native of Puerto Rico. He was married in October of 1971. He came to the United States in 1978 with his wife and one child and was later joined by his twins. Ruiz completed 11th grade in Puerto Rico.

Since 1979, Ruiz' wife has worked at Lenox China. He began working there in 1978 as a fork lift driver and worked eight years until 1986, when he was fired as a result of the incident of drug distribution. While worked at Lenox, he became lead man of the fork lift operators, working the 4 p.m. to 12 a.m. shift.

In addition to working at Lenox, Ruiz also began working at Resorts International Hotel & Casino in 1979 and worked there through 1985 as a buffet attendant. He worked six days a week, eight hours a day at Lenox and six hours a day, five days a week at Resorts in order to save money to buy a house, which he managed to do in 1982. After he bought the house he stopped working at Resorts and remained at Lenox.

Mr. Ruiz described the incident for which he was arrested. He was in the cafeteria at Lenox in October 1986 when a man came to the table and asked for a half of gram of cocaine. Another individual at the table had some cocaine and put it on a napkin. This individual was sitting too far away from the person who had requested the drugs and he passed the napkin in the direction of Ruiz who passed it on to the requesting party. Ruiz never owned the specific drugs in question, nor did he receive any money for them and was never involved in any sale of these drugs. However, he did pass the napkin with the drugs on it.

According to the respondent, he pled guilty because his lawyer said this was the only way out for him. The whole incident was very hard on his family and himself and he expressed extreme regret at the pain he caused.

Ruiz acknowledged that he previously used drugs on an occasional basis, although he has not done so since 1986. More specifically, he began using marijuana when he was 17 years old in 1974 and then in about 1978 he began using cocaine, which he used during the period of 1984 to 1986 on an occasional basis. At the time of his arrest, some marijuana was also found on him. He has not used either drug or any others since his arrest.

Following his arrest, Ruiz was fired from Lenox. He was unable to obtain unemployment because of the circumstances under which he lost his job. He served his jail time and his probation period and, according to an affidavit from Susan Hargis, his probation officer with the Atlantic County probation office (R-1 in evidence), Ruiz was on probation from April 3, 1987 until October 1988 and successfully completed his probation and paid his fine as required.

Mr. Ruiz eventually became reemployed in the casino industry after a friend told him of a job at Harrahs. When he went to Harrahs, he did not tell anyone about his arrest and conviction because he was afraid that he would not get a job. He was placed in

charge of general cleaning on the 12 a.m. to 8 a.m. shift and was eventually promoted to chief supervisor on that shift. He changed shifts after a year in order to move to the swing shift so that he could have more time with his family, even though the change of shifts necessitated a demotion. He was again promoted to chief supervisor in April of 1990. His work does not take him into the casino portion of the premises at all.

Mr. Ruiz advised his boss, Bob Wuzzardo of his conviction for distribution of cocaine after he received a letter from the Casino Control Commission indicating that the Division was seeking revocation of his registration. He offered to quit, but Wuzzardo told him not to and instead urged him to fight the revocation.

Mr. Ruiz attends the Way of Life Pentacostal Church in Pleasantville. Although he was not very involved with the church prior to 1986, attending on a once-a-week basis, since that time he has become heavily involved, has been baptized and attended classes and is now a "member of the church" as of 1989. He was very active with other members of the church when the congregation purchased an old building and renovated it. He has been elected by the membership as the superintendent of the Bible School and he and his wife are co-signers with the church for a van and for the building in which it is housed.

On cross-examination Ruiz acknowledged that when he passed the drugs to the individual who had requested them, he did pass money back from that individual to Carlos or Charles, who was the person from whom the drugs came. There were six people seated at the table. When asked who he purchased his cocaine from, he stated that this was Carlos.

Robert W. Wuzzardo, Executive Steward at Harrahs Marina, testified that he is responsible for all cleaning and outfitting of the restaurants and supervises 150 people. He has known Mr. Ruiz since December 1986, having met him at the time when he interviewed him for employment. Wuzzardo made the decision to hire him, although at the time he did not know of the criminal conviction. He has had daily contact with Ruiz ever since and knows that Ruiz has no contact with the casino itself at any time. Ruiz supervises approximately 25 people. Wuzzardo is responsible for preparing Ruiz' evaluations and several of these were introduced as exhibits. Wuzzardo has observed no indications that Ruiz has been using drugs at any time since he was employed at Harrahs.

The witness described Ruiz as "extremely important" to his operation. The respondent now acts as a shift supervisor and assistant to Wuzzardo on the grave shift. The witness evaluated Ruiz as extremely good with employees, knowledgeable, and very able with respect to handling employees.

Wuzzardo learned of Ruiz' criminal conviction about a year ago. Mr. Ruiz was quite upset and offered to quit, but after discussions with the Food and Beverage Director and questioning of Ruiz concerning the incident, Wuzzardo urged him to fight the revocation. According to the witness, who was present in court during Mr. Ruiz' testimony before this Judge, the version of the incident which Ruiz related to Wuzzardo at the time that he explained what had occurred was essentially the same as that related under oath at this hearing.

Wuzzardo described Ruiz as a man of character, a good family man, who took a demotion and a change of shifts in order to be home with his teenage sons. He described the respondent as a man who takes his work home with him and is perhaps "over conscientious."

Richard Schneider, Food and Beverage Director at Harrahs, who supervises 1200 employees, first met Mr. Ruiz in December 1986. He sees him about four or five times a week and depends heavily on Ruiz, who does everything that he is asked to do and helps manage the food and beverage facilities. When Schneider first learned of the conviction a year ago, he was surprised and shocked. According to Schneider, Ruiz related essentially the same information to him at the time as Ruiz testified in court in this proceeding. Schneider described himself as having "great admiration" for Ruiz, who is a "great guy," and he would not want to operate his facilities without him. He stands by him, as does the hotel.

Schneider testified that Ruiz is an individual who he would "trust with anything," an "A-one" person with great honesty and integrity.

In addition to the testimony, Mr. Ruiz also offered a certification from Reverend William Vazquez Velez, president of the Federation of Pentacostal Churches, Alpha and Omega, Inc., described in the certification as an organization of over 80 churches in the United States and throughout the world with thousands of members.

Vasquez Velez has known Ruiz and his family for over ten years and described their relationship to the church of which Ruiz has been a member himself for over one year. He has since become a very active member of the church and is superintendent of the Sunday School by election of the church members. Such an individual must "be a good Christian, have teaching ability and the ability to direct people." The Reverend refers to Ruiz as a "hard working family man and of good moral character, honesty and integrity." He further notes that Ruiz works at the church on construction during his free time and attends church on Sundays and on his days off. He concludes by noting that he has been aware of the arrest and conviction and that "it is my belief that this incident was a one-time, isolated occurrence and not indicative of Ruiz' character."

In addition to its other evidence, the Division of Gaming Enforcement offered arrest reports concerning the investigation and the arrest of Mr. Ruiz and his co-defendants as a result of the undercover drug investigation conducted at Lenox China in 1986. The references to Mr. Ruiz and the incident of October 31, 1986 are somewhat limited. Essentially, the investigator, L.E. Folks, in a report of November 7, 1986, indicates that at approximately 8:10 p.m. on the evening of October 31, 1986, he purchased a $40 bag of purported cocaine from a Spanish male named Luis, a fork lift operator at the plant. The sale was made "by Charles Rice," who evidently was another defendant in the case and was apparently involved in some form of cooperation with the authorities, and the sale was "observed by Folks." Additional investigation reports show that Ruiz was arrested and that on November 25, 1986, he was interviewed by Lieutenant Hepburn. Investigator Michael Fadden noted in his report of November 25, 1986 that in the course of interviews by Hepburn, Ruiz admitted possession and use of CDS. In investigator Folks' report of November 26, 1986, he notes that during a "confrontation" with Ruiz, the subject admitted using cocaine, but denied selling any.

DISCUSSION

The evidence establishes, and I **FIND**, that Luis A. Ruiz, an employee of Lenox China in October 1986, participated in distribution of cocaine to an individual who apparently was working in some sort of informant capacity for an investigator doing undercover work as part of a drug investigation at the Lenox plant. I **FIND** no evidence that Ruiz personally received money which he was intending to retain or did retain as part

of this distribution, although according to his own testimony, he accepted money from the buyer and passed it on to the initial distributor, Carlos. In essence, according to Ruiz' version of the events, he was a conduit for the distribution from Carlos to the requesting party and a conduit for the payment to Carlos in exchange for the drugs. At the same time, Ruiz acknowledges that he knew that he was passing cocaine and that he was a user of cocaine at the time. Based upon his testimony at this hearing, as well as that which he presented to Judge Neustadter at the time of his guilty plea on March 16, 1987, there is no doubt but that Mr. Ruiz was involved in the distribution of cocaine on October 31, 1986. His conviction for distribution of a controlled dangerous substance in violation of N.J.S.A. 24:21-19a(1) constitutes disqualifying conduct pursuant to the Casino Control Act, N.J.S.A. 5:12-86c1.

Since his conviction in 1987, Mr. Ruiz has been reemployed in the casino industry and has performed in an excellent fashion as a highly trusted and responsible employee of Harrahs Casino Hotel. He functions in a non-casino related capacity and has achieved promotion to a supervisory position on not one, but two occasions. In addition, Ruiz has become actively involved with his church and has continued to raise his family as he did prior to his conviction. It is obvious from the testimony that Mr. Ruiz has always conducted himself as a highly responsible worker and family man and upon arrival on the mainland worked very hard at two jobs in order to achieve the goal of homeownership. It is unfortunate that both prior to and after his arrival from Puerto Rico Mr. Ruiz had become involved with marijuana and eventially cocaine and continued use of these illegal substances until his arrest.

Mr. Ruiz' involvement with cocaine did not begin on the night on which he distributed the cocaine for which he was eventually arrested. In some sense, this incident was not the isolated type of matter which Reverend Vazquez Velez suggests. It is certainly arguable that Ruiz' long standing cocaine use, although it may not have amounted to an addiction, put him on the slippery slope toward involvement in distribution. Nevertheless, taking all of the circumstances into account, I am impressed by the fact that Mr. Ruiz has, since the time of his conviction, performed in his job and family capacities as society would demand and that there is no evidence that he has again become involved in the use of illegal substances, much less in their distribution. I found his testimony concerning his non-use of these items since 1986 to be credible. In addition, I found the testimony of his character witnesses to be quite impressive and persuasive.

With respect to consideration of the rehabilitation criteria, I find that Mr. Ruiz was involved in the serious criminal matter of distribution of cocaine, but that there is no evidence in the record that he was specifically involved in any incidents other than the October 31, 1986 distribution. With respect to that incident, I find that he was a conduit, rather than the originator, of the sale and that he did not profit from the same. I find that he is a good family man, that he is an active church member, that he participates in community-based, public spirited and beneficial works through his church involvement. With respect to employment, he has an outstanding employment record, which has been essentially continuous from his arrival from Puerto Rico up to the present, except for the period of unemployment which followed his termination at Lenox, which resulted from this unfortunate criminal incident.

In conclusion, I **FIND** that Mr. Ruiz has successfully established that he has rehabilitated himself from the disqualification which is properly applicable to one convicted of distribution of cocaine. I have every reason to believe and expect that he will continue to perform admirably in the casino industry, albeit in a role which does not put him in direct contact with the casinos themselves. I **CONCLUDE** that revocation of his casino hotel employee registration is not warranted. As such, the complaint is hereby **DISMISSED.**

This recommended decision may be adopted, 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.

1102

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

August 16, 1990
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

8/17/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 22 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

ij

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EVIDENCE LIST

On behalf of petitioner:

P-1 Arrest report with additional investigation reports and plea bargain and sentencing records

P-2 Indictment No. 87-02-0232-C-I

P-3 Transcript of plea, State of New Jersey v. Luis Ruiz, Indictment No. 87-02-232, March 16, 1987

On behalf of respondent:

R-1 Affidavit of Susan Hargis

R-2 Certification of Reverend William Vazquez Velez

R-3 Harrahs salaried employees' performance appraisal, December 20, 1986 to December 20, 1987

R-4 Harrahs salaried employees' performance appraisal, dated December 20, 1987 to December 20, 1988

R-5 Harrahs salaried employees' performance appraisal, dated December 5, 1988 to December 5, 1989

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-90
APPLICATION NO. 076198-21
(REGISTRATION NO. 070333-40)
OAL DOCKET NO. CCC 08223-89
ORDER NO. 90-43-12

APPLICATION OF FREDERICK D. RUSSELL
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 31, 1990,

IT IS on this 18th day of December 1990, ORDERED that the initial decision is rejected; and

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated on the record; and

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining 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 this denial shall not affect Frederick D. Russell's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION

Steven P. Perskie /am

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC-08223-89
AGENCY DKT. NO. 90-EA-90

CASINO CONTROL COMMISSION

FREDERICK D. RUSSELL,

Petitioner,

vs.

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

Respondent.

FREDERICK D. RUSSELL, petitioner pro se

JAMES J. ARMSTRONG, Deputy Attorney General for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record closed: AUGUST 10,1990 Decided: SEPTEMBER 7, 1990

BEFORE **JOSEPH E. KANE,** ALJ:

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) objecting to the issuance of a casino employee license to petitioner. The Division alleges that petitioner failed to disclose his arrest record as required by N.J.S.A. 5:12-86b and that as a result, he lacks the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2) and 90b.

PROCEDURAL HISTORY

The Division filed its letter of objection with the Commission on August 15, 1989. Petitioner requested a hearing on October 11, 1989 and on October 18, 1989 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on April 23, 1990 by Jeff S. Masin, ALJ followed by a hearing which was held on August 10, 1990. The record was closed on August 10, 1990.

ISSUES

A. With reference to the items listed in the letter of August 15, 1989, did Mr. Russell fail to disclose on

his Personal History Disclosure Form any or all of the arrests listed? If so, does his failure to disclose them require that his license be denied pursuant to N.J.S.A. 5:12-86b?

B. Does Mr. Russell have the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2) and 90b?

FINDINGS OF FACT

Petitioner is 49 years old, currently married, and supports his wife and six year old daughter. He currently holds a hotel registration and has been employed for the last four years as a mail clerk at the Sands Hotel/Casino. His purpose in applying for a casino license was that his current employment permitted him to also assume a part-time position three times per week and he felt that a title such as slot attendant or change person would not only afford him additional income but would also allow him an entree into an upward mobility position in the event he decided upon a career change in the future. He felt that a part-time change person or slot attendant position would afford him an opportunity to prove that he had the ability to perform the job.

Mr. Russell has not been arrested or convicted of any offense since 1974. Nevertheless, between 1959 and 1974 his record indicates 13 arrests. Normally it is possible to examine the police incident reports concerning an arrest, however, in this instance due to the age of these particular offenses, the records have been destroyed. A complete list of the 13 arrests are set forth in Exhibit R-3 thru R-8.

On page 15, question 16 of the Personal History Disclosure Form filed by Mr. Russell, he answered the question "have you ever been arrested?" in the negative. When confronted with question number 16, Mr. Russell knew that he had been arrested in the past. He was ashamed of the child molestation charge and despite the dismissal of these charges, he did not want to be stigmatized by having to admit to any individual or agency that he had been so charged. He testified that in the past when he had put down on a job application that he had been arrested, he was never called back for an interview and he was frightened that when applying for the casino license, this pattern would be repeated. When questioned by Agent Keitt concerning the arrest, he indicated that he was not sure as to the outcome of some of the assault charges because that was a period of his life when both he and his wife were drinking which often resulted in a domestic dispute. Mr. Russell felt that he had left his past behind him in Philadelphia and was hoping that he would be able to prove his abilities and trustworthiness once he gained the license and new position. When confronted during his personal interview, he was able to recall seven of the arrests. Admittedly, at the time he was completing the answer to question number 16 on page 15 of the Personal History Disclosure Form, he intentionally decided to answer in the negative.

In order to prove his good character, honesty and integrity, Mr. Russell testified that he has never been arrested since his last arrest in November of 1974. He has abstained from drinking, is remarried and considers he has left his past in

Philadelphia. For the last six months, he has been working with senior citizens and attempting to form a men's fellowship group at the Salvation Army in Atlantic City, New Jersey.

The documentary evidence submitted by petitioner in support of his good character, honesty and integrity can be described in one word, overwhelming. No less than 28 documents signed by no less than 40 individuals were received into evidence. Since starting work on September 15, 1986, petitioner has had a wide involvement and daily contact with many employees and departments within the Trump organization. The 28 letters submitted by him, demonstrate that he is extremely well liked, respected and considered by all to be a hardworking, industrous employee. Petitioner was sixth of the finalists for employee of the month out of 4,200 Trump employees. Petitioner qualified for this honor in November of 1988 and again in May of 1990.

Petitioner enjoys working in the mailroom and has been commended by his employer for developing innovative time-saving programs. He enjoys his work and is ready to take on the additional responsibility of a change person on a part-time basis.

HAS PETITIONER FAILED TO DISCLOSE INFORMATION MATERIAL TO HIS LICENSURE.

Section 86b of the Act establishes an affirmative obligation on the part of an applicant to fully disclose whether and when the applicant has been arrested. Petitioner admitted that he failed to truthfully answer question number 16 on page 15

of the Personal History Disclosure Form. When questioned by the DGE agent, he was able to recall approximately seven of the 13 arrests. Considering the nature of the offenses and the time period involved, his inability to recall in detail all 13 arrests does not reflect negatively on his honesty or integrity. The crucial issue is whether his failure to disclose any arrests in response to question number 16 on page 15 of his PHD constitutes a violation of Section 86b of the Act.

Petitioner's fear in answering "yes" to an arrest record was based upon his past experiences in dealing with the prejudice that often results in such a truthful response. The irony of this entire matter is that if he had detailed all 13 arrests on the PHD, in all likelihood, a challenge to the granting of his license would not have occurred due to the age and nature of the offenses. Unfortunately, he knowingly and intentionally omitted these arrests from the PHD hoping that by the time his record was discovered, he would have been given an opportunity to prove his honesty and integrity as a slot attendant or change person. Agent Daniel Keitt conducted a personal interview with the petitioner on April 3, 1989. When read question number 16, petitioner recalled four arrests and later during the course of the interview recalled another three. When read the entire rap sheet, petitioner could not recall the remaining eight arrests.

Petitioner's reason and motivation in failing to disclose his arrests in response to question number 16 of the PHD, cannot be condoned. It is understandable, that petitioner may not have been able to recall all of his encounters with the criminal

justice system due to the age of many of the offenses which occurred between 1959 and 1974.

As set forth above, petitioner's motive in failing to disclose the arrests cannot be condoned, however, he did redeem himself somewhat by recalling seven of the 13 arrests when confronted by Agent Keitts. Had he continued the charade during the course of his personal interview, his honesty and integrity would be drawn into irrefutable question. Under the circumstances, however, his attempts to secrete his past did not materially hinder or otherwise subvert the DGE's investigation of his qualifications for licensure. Accordingly, **I DO NOT FIND** that a violation of Section 86b of the Act has occurred so as to disqualify petitioner from licensure provided that he is able to sufficiently demonstrate by clear and convincing evidence his good character, honesty and integrity required by Section 89b(2) of the Act.

DOES PETITIONER POSSESS THE REQUISITE GOOD CHARACTER, HONESTY AND INTEGRITY REQUIRED FOR LICENSURE PURSUANT TO SECTION 89b(2) OF THE ACT.

Whenever the Division raises the good character, honesty and integrity of an applicant, it is then incumbent upon the petitioner to demonstrate by clear and convincing evidence that he does possess the requisite qualities necessary for licensure under Section 89b of the Act. This tribunal is thoroughly persuaded that petitioner has met his burden more than ample evidence that is both clear and convincing.

Through his work in the mailroom, petitioner interacts virtually on a daily basis with many levels of the Trump Plaza organization. This is abundantly clear when examining the job titles of the various individuals who provided letters on behalf of the petitioner. This broad spectrum of review demonstrates that petitioner is hardworking, reliable, honest and always polite even under pressure or when confronted with difficult situations. He has earned the confidence of his employer to the extent that out of 4,200 employees, he was named employee of the month in November of 1988 and again in May of 1990.

Petitioner experienced 13 encounters with the criminal justice system between 1959 and 1974 which he attributes largely to his involvement with alcohol. His lack of involvement with criminal activities since 1974 mitigates in his favor especially when contrasted against his previous record.

Petitioner's failure to truthfully answer question number 16 of the PHD when considered against the above, appears to be a defect in his character, but not one which when compared with the above evidence, is so great so as to seriously draw into question his good character, honesty and integrity.

For the reasons set forth above, I **HEREBY HOLD** that petitioner has demonstrated his good character, honesty and integrity by clear and convincing evidence as required by Section 89b(2) of the Act.

CONCLUSION

I CONCLUDE that petitioner should be permitted to obtain a casino employee license. **IT IS SO HELD** this 7th day of September 1990.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Sept. 7, 1990
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

9/10/90
DATE

CASINO CONTROL COMMISSION

OAL DKT. NO. CCC-08223-89

SEP 2 1 1990

DATE

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

FOR PETITIONER:

P-1 Letter dated May 18, 1990 from Donald L. Patterson;
P-2 Letter dated May 14, 1990 from Frederick D. Russell;
P-3 Letter dated April 25, 1990 from Brenda Johnson-Mayfield;
P-4 Letter dated April 25, 1990 from Eileen V. McDonald;
P-5 Letter from L.J. Rydiski, undated;
P-6 Letter from Antonio Martire, Jr., undated;
P-7 Letter dated April 26, 1990 from Kathleen Niszczak;
P-8 Letter dated April 27, 1990 from Marie J. Haggerty;
P-9 Letter dated April 27, 1990 from Marylynn Godman, Joyce Weber, Eileen M. Oleksiak and Anne Miller;
P-10 Letter dated April 27, 1989 from Martha L. Purnell;
P-11 Letter dated April 27, 1990 from Ann G. Tomasello;
P-12 Letter dated May 1, 1990 from Craig D. Keyser;
P-13 Letter from Anna Limper, undated;
P-14 Letter from Theresa Mattera, undated;
P-15 Letter from Sharon Morgan, undated;
P-16 Letter dated May 1, 1990 from Ruth Marks and J.D. Evans;
P-17 Letter dated May 1, 1990 from Rodney E. Ferguson;
P-18 Letter dated May 2, 1990 from Patricia L. Anderson;
P-19 Letter dated May 3, 1990 from James F. Allen;
P-20 Letter dated May 4, 1990 from Michael Virga;
P-21 Letter dated May 8, 1990 from Nancy Booth;
P-22 Letter dated May 10, 1990 from Carol Kirchman;
P-23 Letter dated May 10, 1990 from Jeri McAnally;
P-24 Letter dated May 10, 1990 from Colleen Skellenger;

P-25 Letter dated May 22, 1990 from Phillip Lee Jackson, Jr.;
P-26 Letter dated May 21, 1990 from Donald L. Patterson;
P-27 Letter dated May 24, 1990 from Marianne Martino;
P-28 Letter dated May 29, 1990 from Donald L. Patterson;
P-29 Newspaper clipping for employee of the month;
P-30 Trump Plaza Employee Newsletter;

FOR RESPONDENT:

R-1 Investigative Summary Report dated May 4, 1989;
R-2 Personal History Disclosure Form-2A;
R-3 FBI Criminal History Report;
R-4 New Jersey State Police Criminal History Record;
R-5 Vineland Police Arrest Report;
R-6 Vineland Police Arrest Report;
R-7 Computer Printout for Arrest Record, Philadelphia, Pa.;
R-8 Arrest card from Camden Police Department;

WITNESSES

FOR PETITIONER:

Frederick D. Russell;

FOR RESPONDENT:

Agent Daniel J. Keitt;

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-343
LICENSE NO. 041232-21
REGISTRATION NO. 031906-40
OAL DOCKET NO. CCC 03902-89
ORDER NO. 90-41-3

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

Complainant,

v.

GLENN SALSBERG,

Respondent.

ORDER

A hearing 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 exceptions having been filed by both parties; and the Commission having considered the entire record of these proceedings at its public meeting of October 17, 1990,

IT IS on this 14th day of December 1990, ORDERED that the initial decision is modified as follows:

> The administrative law judge erroneously recited the facts of Dunston v. Dept. of Law, 240 N.J. Super. 53 (App. Div. 1990). (See initial decision at 7). Dunston involved a woman employed in the maintenance and cleaning department of a casino who had authorized access to restricted casino areas. The position required, and Ms. Dunston sought to renew, a casino employee license, not a casino hotel employee registration as the administrative law judge assumed. Thus, contrary to the administrative law judge's understanding, Ms. Dunston, like Mr. Salsberg, was required to establish her good character, honesty and integrity.

The Dunston case is, nevertheless, distinguishable from this matter because, in that case, the applicant worked for approximately four years after her disqualifying theft without further incident. Here the respondent's subsequent employment with the Claridge security department was for only thirteen months. This and other distinguishing factors, render Dunston inapposite.

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that Glenn Salsberg is prohibited from reapplying for or obtaining any license, registration, qualification or approval 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 the respondent's casino hotel employee registration not be revoked for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3902-89
AGENCY DKT. NO. 89-343

STATE OF NEW JERSEY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
GLENN SALSBERG,
Respondent.

Katrinia Wright, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Carmen R. Faia, Esq., for respondent

Record Closed: June 26, 1990 Decided: August 2, 1990

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

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on May 2, 1989 seeking revocation of Mr. Salsberg's casino employee license and casino hotel employee registration, based upon allegations that Mr. Salsberg had committed the offense of theft by unlawful taking, a violation of N.J.S.A. 2C:20-3. Mr. Salsberg 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. 52:14F-1 et seq.

Following transmittal, the matter was preheard before Administrative Law Judge Joseph F. Fidler on August 18, 1989, and Judge Fidler issued a prehearing

order on that date. The prehearing established the issues for consideration at the hearing as follows:

1. Has the respondent been convicted of the disorderly persons offense of theft by unlawful taking, contrary to N.J.S.A. 2C:20-3, and if so, would his continued casino employee licensure and hotel employee registration be inimical to the policies of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and to casino operations, pursuant to section 86c(2) of the act?

2. Has the respondent established by clear and convincing evidence that he possesses the good character, honesty and integrity required for casino employee licensure, pursuant to sections 89b(2) and 90b of the act?

A hearing was held before Administrative Law Judge Jeff S. Masin on June 4, 1990 at the Office of Administrative Law in Atlantic City. Following the hearing, counsel submitted briefs which were received from the deputy attorney general on June 11, 1990 and from respondent's counsel on June 26, 1990. The record closed upon receipt of the last brief on June 26.

EVIDENCE

There is no dispute concerning the significant facts of this case. Mr. Salsberg, a casino industry employee since 1982, was employed on December 26, 1988 at the Showboat Casino Hotel as a lead cashier selling change at change booths. At 2:20 A.M. on December 26, Detective Ames, a detective for seven years with the New Jersey State Police assigned to the casino unit, was called to the Showboat to observe a video tape of Mr. Salsberg engaging in conduct which appeared to be inappropriate. According to Ames' testimony, the tape, which was shown at the hearing, appeared to show Salsberg pocketing a $20 bill while he was counting out money at his duty station. Ames brought Salsberg to the Commission office at the Showboat, gave his Miranda warnings and asked him to empty his pocket. Salsberg appeared to move his hand in a deceptive manner, although Ames agreed on cross-examination that he could not be sure whether the action was a deceptive motion or alternatively, one caused by the cerebral palsy which affected Salsberg. Ames determined that Salsberg was holding a $20 bill in his hand, which had been in his front pocket. Salsberg claimed that the money was a tip. When he was asked who gave it to him, he gave "inappropriate" answers. When Salsberg was told that an audit showed a $20 difference between the appropriate amount of money and the

actual money counted, he admitted that he had taken the money and signed a written statement which Ames wrote out for Salsberg because of Salsberg's physical problem. Salsberg read the document and signed it in the officer's presence. A complaint was sworn out against the respondent in the Atlantic City Municipal Court, charging him with theft by unlawful taking, in violation of N.J.S.A. 2C:20-3.

Mr. Salsberg testified on his own behalf. Salsberg is 28 years old and lives in Atlantic City with his mother, with whom he owns a property and shares expenses. She is employed at the Claridge Hotel. Salsberg, a 1982 graduate of Mastbaum Vocational High School in Philadelphia, became employed at the Golden Nugget as a wine server in 1982, but was fired because of his difficulty in performing his duties due to the difficulties which the cerebral palsy caused him. He was eligible for re-hire and was hired by Resorts and later by the Tropicana, where he worked from 1982 to 86 as a change person and booth cashier. He began working at the Showboat in 1987 as a booth cashier and then as a lead cashier.

Salsberg admitted that he had in fact pocketed the $20 bill. He agreed that he was in fact attempting to hide the bill and that the hand movements were deceptive rather than a result of his affliction. Although he was aware that surveillance cameras scanned the cashier area, he nevertheless did attempt to take the money. According to Salsberg, at the time that this occurred, he was "burned out," had been doing the same type of work for eight years, but was embarrassed to ask his mother about quitting his job. Apparently he had a discussion with her and she indicated that she preferred that he stay at the job. Salsberg claimed that he had tried to obtain other jobs in the industry, but was unable to do so because of the limitations which his arm imposed upon his ability to do so certain forms of work and fear on the part of potential employers of lawsuits.

Mr. Salsberg agreed that he was well aware that it was wrong to take any money from his employer. Although he expected that if he was caught he would probably be fired, he did not think he would be charged with any criminal offense. When the state police confronted him he was scared and nervous, although he was not positive that he was going to be charged with any offense. At first he did not admit having taken the money because of his fear, but when he was asked again he admitted what he had done because he is "honest" and wanted to get the incident "off his chest."

As a result of his actions, Mr. Salsberg was fired from his position with the Showboat. Criminal charges were not filed until three weeks later and Salsberg was not sure at the time he was fired that he was going to be charged. He told his mother that he had been fired because had taken the keys home, something which he had done the day before. He was too embarrassed to face up to her concerning what he had actually done. As a result of his informing her that he had lost his job, she told him that she would talk to someone at the Claridge where she worked about his becoming a booth cashier. He went to the Claridge on the 27th. His first choice of employment was as a booth cashier and his second choice as a security officer.

The original application filed by Salsberg seeking employment at the Claridge was filled out on December 27, 1988 and was introduced in evidence as P-7. With respect to his employment at the Showboat, he advised that the reason for leaving was that he had taken keys home by accident, the same story which he had told his mother and which according to him she had related to her contact at the Claridge when she sought to determine whether Salsberg could get a job there. He explained that he wrote down this false information about the reason for his termination at the Showboat because he was embarrassed and did not want his mother to find out that he was a "common criminal."

Mr. Salsberg was offered a job as a booth cashier at $8 an hour, which is 15 cents less then he had been making at the Showboat. Because he did not want to deal with the same type of work, he accepted a job as a security officer for $7 an hour. During his orientation program he was called out and immediately said "I know what its all about." At this point he advised what he had done at the Showboat. Salsberg was told that after the municipal court matter was disposed of he could reapply for employment at the Claridge.

Mr. Salsberg pled guilty to the municipal court charge and was fined $25. He applied for unemployment compensation and advised the unemployment agency of the actual reason for his termination. When he reapplied for employment at the Claridge he put the actual reason for termination on the application, as well as indicating the charge and conviction for the disorderly persons offense.

The respondent was employed at the Claridge as a security officer in late April 1989. In that capacity he was involved in many activities which brought them into contact with substantial amounts of money. He looked for stolen money and lost

items, and carried money back and forth throughout the premises. He resigned from the Claridge on May 14, 1990, as a result of a dispute with another security officer.

On cross-examination, the witness denied that it was likely that his co-worker at the Showboat cashier booth, Ms. Moore, would have been responsible for the $20 loss which would have shown up on the records had he managed to abscond with the $20 which he pocketed. It would not have been uncommon for Ms. Moore to make a mistake in her count. However, he did acknowledge that drawer shortages can lead to the termination of an employee. He also acknowledged that he was aware that there were certain angles which the security cameras could not see and acknowledged that he had lied on his application seeking employment at the Claridge.

In addition to his own testimony, Salsberg presented many letters from character witnesses including supervisors and fellow employees.

DISCUSSION

This case raises some very serious issues. On a simple level, there is no dispute that Mr. Salsberg engaged in theft by deception, that he was convicted of this offense in municipal court, that it was his intention to pocket and steal $20 from his employer and that in so acting he acted in violation of his fiduciary responsibility and in clear and absolute opposition to the policies of the Casino Control Act which seek to promote honesty in gaming operations and all related financial aspects in the casino industry and which seek to assure as much as possible that employees within the industry are honest, upstanding and, particularly with those involved in financial roles, trustworthy persons. Mr. Salsberg's motivation for pocketing the money is unexplained.

In addition to Salsberg's commission of the basic impropriety of stealing from his employer, the evidence established that he compounded his improper behavior by initially lying to the investigator about the money, claiming that it was a tip. While admittedly Salsberg quickly changed his tune and told Detective Ames the truth, acknowledging his wrongdoing, Salsberg then went on to lie to his mother about what had led to his losing his job and, more significantly for the purposes of this regulatory action, continued the lie by misrepresenting the reason for his termination on his application for employment at the Claridge. It was only when he

was confronted by Claridge representatives at the commencement of his orientation session that he acknowledged the true circumstances of his termination.

All of the above strongly suggests that Mr. Salsberg, for whatever reason, conducted himself as both a thief and as a lier in reference to his employer and his prospective employer. His thievery was limited in scope in that he only attempted to take $20. It would be inappropriate to presume that this incident was anything other than the first incident of this type. In view of the minimal amount of money involved the offense which he committed would only constitute a disorderly persons offense, a violation of N.J.S.A. 2C:20-3. It would not constitute an enumerated disqualifying offense. However, there can be little question that one who steals from an employer, especially when the employment is within the casino industry, is an individual whose continued licensure would, on the face of the situation, clearly be against the interests of the casino industry and the policies of the Casino Control Act and therefore inimical and barred by N.J.S.A. 5:12-86c2.

If there is a problem in this case which raises any concern as to whether in fact to declare Salsberg's continued licensure inimical, it is the fact that he has apparently successfully worked within the industry since the time of the criminal incident. For reasons which this judge must confess he finds somewhat disquieting, a casino entity determined that after Salsberg was convicted of theft by unlawful taking that he should be reemployed within the industry and placed in a security position. While I do not wish to suggest that it is by any means impossible for Mr. Salsberg to have suffered an aberrational incident in his life, one not reasonably likely to be repeated, given the short period of time which passed from the date on which he was discovered stealing from his employer until the date upon which he was reemployed and placed in a security position by a different casino hotel, it seems at least surprising, if not mystifying, that he would have been so employed and so assigned While Mr. Salsberg may properly have some role in the casino industry, placing an individual in a potentially sensitive position with access to employer's and even the public's funds who so recently showed himself sufficiently devoid of character so as to stoop to stealing money from his employer and violating his fiduciary responsibilities, strikes the hearer as troubling. While there may have been reasons why Claridge personnel deemed it appropriate, the fact is that employment within the casino industry is not simply an employer/employee matter, but also involves a rigid licensing procedure through a regulatory body with its own role to play in determining whether individuals are employable within the industry.

Having considered the evidence in this case, including the substantial body of character references produced by the respondent, I **FIND** that Mr. Salsberg engaged in the disorderly persons offense of theft by unlawful taking and more specifically that this theft involved the removal of funds which Salsberg was responsible for and for which he had a fiduciary responsibility toward his employer. The theft occurred within the confines of a casino and within the context of a casino employment relationship. Further, I **FIND** that Mr. Salsberg misrepresented the reasons for his termination from the Showboat when he applied for employment at the Claridge. I **FIND** that there is a serious question as to Salsberg's good character, honesty and integrity and that I cannot **FIND** that at this time he has established his good character, honesty and integrity by clear and convincing evidence, as required by N.J.S.A. 5:12-89b(2) and 90b, despite the opinions of those who have spoken in his behalf.

I **FIND** nothing in this case which suggests that Salsberg should be permitted to retain licensure, despite the determinations of the Appellate Division in its decision in Dunston v. Dept. of Law, 240 N.J. Super. 53 (App. Div. 1990). While the court in that case seemed to view the plight of a woman with little education or training in a sympathetic and understanding way, and while it seemed to focus on the negative aspects of the casino atmosphere as a possible excuse for yielding to temptation, the facts of that case, involving a cleaning lady holding a casino registration, not required to prove good character, honesty and integrity, are sufficiently distinct from the facts and legal context of Mr. Salsberg's matter as to differentiate them, despite the handicap which affects Salsberg and which certainly is of concern.

Based upon the above, I **CONCLUDE** that the continued licensure of Mr. Salsberg as a casino employee would be inimical. Further, I **FIND** that he has failed to establish by clear and convincing evidence that he has the requisite good character, honesty and integrity for licensure required by N.J.S.A. 5:12-89b2 and 90b. Therefore, it is **ORDERED** that his casino license be **REVOKED**.

As for Mr. Salsberg's casino hotel employee registration, the statute does not require that one possessing such a registration prove good character, honesty and integrity. As for inimicality, it is perhaps somewhat more difficult to conclude that a convicted thief cannot hold any position within the industry, even at a registrant's level, although even this is certainly arguable. On balance, I see no reason why Mr. Salsberg's involvement in certain aspects of the industry in a registrant capacity would not be appropriate. I recognize that his disability may limit his opportunity

with respect to some of these potential employments, nevertheless, given the seriousness of the actions in which he engaged, I cannot at this time find that his licensure would be appropriate. As for registration, if he has no contact whatsoever with financial, gaming or security matters, I would find no objection to his continued registration.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 2, 1990
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

8/3/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 0 7 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

P-1 Video tape and case tape no. 5053-6

P-2 Photocopy of Slot Booth Credit and Slot Booth Fill slips

P-3 Statement of Glenn Salsberg

P-4 Atlantic City Municipal Court Complaint S205756, State of New Jersey v. Glenn L. Salsberg

P-5 Surveillance Department Incident Report, dated December 26, 1988

P-6 New Jersey State Police Investigation Report, 2 pages

P-7 Application for Employment at Claridge Casino Hotel

P-8 Payroll Information Sheet from Claridge Casino Hotel

On behalf of respondent:

R-1 Atlantic City Municipal Court Complaint S205756

R-2 Employment Application for Claridge Casino Hotel, dated April 21, 1989

R-3 Security Personnel Evaluation from Claridge Casino Hotel, bearing "received" stamp August 3, 1989

R-4 Payroll Information Sheet, dated August 2, 1989

R-5 Letter of May 18, 1989 from Glenn Belmont, Chairperson, Health and Physical Education Department, Jules E. Mastbaum Area Vocational-Technical High School

R-6 Letter of May 17, 1989 from Eugene P. Jones, Mastbaum Area Vocational-Technical High School

R-7 Letter of June 26, 1989 from N. Peter Maggio, Sr.

R-8 Letter of June 28, 1989 from Robert O. Aders, President, Food Marketing Institute

R-9 Letter of May 14, 1989 from Eve L. Johnson

R-10 Letter of May 16, 1989 from Evelyn Hatala, Executive Slot Host, TropWorld Casino

R-11 Undated letter from L. Cursio, Atlantic City Jitney Association No. 9

R-12 Letter of June 28, 1989 from Dr. B. Kuner-Roth Eb.D., Principal, Indian Rock Elementary School

R-13 Undated letter from Selma Roth

R-14 Letter of May 11, 1989 from Lisa Newland

R-15 Letter from Phylis M. Cohlewa

R-16 Letter of October 23, 1989 from Joseph Bianchini, Claridge Casino Hotel

R-17 Letter of November 2, 1989 from Robert McLaughlin, Security Shift Manager, Claridge Casino Hotel

R-18 Letter of November 7, 1989 from Ron Schuster, Shift Supervisor, Claridge Casino Hotel

R-19 Letter from John R. Rossi, Sr. Investigator, Claridge Casino/Hotel

R-20 Letter from Vince Eagan, Security Shift Supervisor

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-68
LICENSE NO. 001409-21
OAL DOCKET NO. CCC 06825-89
ORDER NO. 90-31-5

APPLICATION OF ARTHUR J. SARACENO
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 August 1, 1990,

IT IS on this 9th day of August 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6825-89
AGENCY DKT. NO. 90-EA-68

ARTHUR J. SARACENO,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

Nicholas J. Schuldt, III, Esq., for petitioner

Charles Kimmel, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: May 21, 1990 Decided: June 19, 1990

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

Arthur J. Saraceno seeks renewal of a casino employee license. The Division of Gaming Enforcement objected to renewal in a letter to the Casino Control Commission dated August 16, 1989. Mr. Saraceno 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 Honorable Edgar R. Holmes, ALJ on January 19, 1990. Judge Holmes issued a prehearing order on January 22, 1990, which established that the issue in dispute was whether or not Mr. Saraceno had the required good character, honesty and integrity for casino employee licensure, as required by N.J.S.A. 5:12-89b(2).

A hearing was held before Administrative Law Judge Jeff S. Masin on May 21, 1990 at the Office of Administrative Law in Atlantic City. The record closed following completion of the hearing.

EVIDENCE

The questions concerning Mr. Saraceno's good character, honesty and integrity, which he must at all times establish by clear and convincing evidence pursuant to N.J.S.A. 5:12-89b(2), arises from an incident which occurred in 1986 in which he submitted fraudulent claims for medical bills to his then employer, Bally's Park Place Hotel Casino. Saraceno does not dispute the incident. According to testimony from Alfred V. Falco, an agent from the Division of Gaming Enforcement asigned to the casino employee licensing section renewal unit, Falco interviewed Saraceno by telephone following his review of the employee license renewal application which was filed by the applicant on July 15, 1987. Saraceno was then employed at the Showboat. On the application, he indicated that he had never been asked to leave by an employer since his last renewal. In fact, Saraceno resigned from Bally's and when questioned about this by Falco he immediately said that he had resigned in lieu of termination. According to Falco's description of Saraceno's explanation, Saraceno had been ill and hospitalized and a substantial number of medical expenses had been incurred, which were to have been paid by Bally's hospital plan. However this did not occur and according to the writeup contained in the investigation report placed in evidence on behalf of the Division as R-1, Falco records that the medical plan "did not cover all the medical expenses and as a result he had to pay some of the bills out of his pocket." In fact, Saraceno falsified medical expense records in order to obtain approximately $200 from Bally's. When Bally's learned of this they intended to terminate Saraceno for misconduct, but he was permitted to resign in lieu of termination.

On cross-examination, Falco admitted that he did not know whether Saraceno obtained any funds that he would not otherwise have been entitled to as a result of the benefits due to him from the medical plan. Falco believed that some of the bills were not covered under the Bally's policy, but he does not know why, nor is he certain whether, they were not covered or whether payment had merely been delayed. He did not conduct an independent investigation of the underlying facts of the incident. The investigation did not show whether Bally's had been defrauded of any money.

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According to Saraceno's explanation to Falco, he, Saraceno, needed the money in order to fend off collection agencies who were putting pressure on him.

Mr. Saraceno testified in his own behalf. He was originally licensed in June of 1978 as a pit clerk and has since worked as a craps person and a dealer. He was chairman of the Toke Committee at Bally's prior to his termination, handling hundreds of thousand dollars a week in a position of trust for his fellow employees. In 1986 a main artery in his stomach gave way and he developed internal bleeding. He was hospitalized for 11 days, had an operation to stop the bleeding, was out of work for eight to ten weeks and in a recuperative condition for three months. He was on medical leave and accumulated medical bills of approximately 12 to 13,000 dollars. He would bring the bills into Bally's or fill out the necessary paperwork and mail it in to the company. In some cases he had to fill out forms three or four times with respect to the same bills. Some of them were paid, some were not. He was left with approximately 13 to 1,400 dollars unpaid, which was to have been covered under the Bally plan. He had never received any letters of refusal from the plan concerning these bills. The Atlantic City Medical Center, where he had first been taken at the time of the problem, was seeking a payment of $100 and threatening to sue him. In addition, after going to the Atlantic City Medical Center, he had taken an ambulance to another facility because of dissatisfaction with the delay in receiving treatment in the emergency room and the ambulance charge was $190. He was receiving threatening letters with respect to these bills as well. Some three to four months after his hospitalization, when he was already back at work, he took several bills into the benefits office and gave them to the female employee who was in charge, who apparently did not want to be bothered with them. According to Saraceno, this employee was later terminated for her improper handling of benefit claims.

At the time Saraceno was attempting to support his family, which included six children. He did not have the money to pay the bills for which the collection agencies were pressing him. He was "intimated" by the letters received from the collection agencies and he "made a mistake." He had a doctor's bill for $100 which had been paid and he changed the date on that bill and added two prescriptions to another bill in order to obtain money which he was not actually entitled to so that he could use it to pay bills which, as far as he was aware, Bally's insurance plan should have already paid.

The applicant denied any intention to benefit financially from his actions. If he had received any overpayment, he would have returned the same.

According to Saraceno, Falco's description of his explanation contained in the investigation report, in which Falco recorded that the medical insurance plan "did not cover all the medical expenses and as a result he had to pay some of the bills out of his pocket," was not correct. He never told Falco that some of the bills were not covered. In fact, all of them were to have been covered by the medical plan. However, when confronted with the situation by the Bally's representatives, he did admit that he had changed the bills and they told him he could resign in lieu of termination.

Saraceno was out of work for two months and then went to work at Showboat and has worked there since that time. He is now a dealer supervisor and a member of the Toke Committee and the Board of Trustees of the Toke Committee. He again deals with great amounts of money and has never had any problem involving these funds.

The witness explained that at the time of the incident, when he was being pressed for payment by the collection agencies and threatened with lawsuits, he "did not know who to turn to or what else to do."

On cross-examination, the witness insisted that he had revealed what had occurred at Bally's when he was hired at the Showboat. He never received any money as a result of the bills which had been sent to Bally's and they ultimately paid all of the outstanding bills.

Character Evidence

In addition to his own testimony, the applicant presented letters of recommendation from a number of individuals who he has had dealings with within and without the industry. These include the chairperson of the Showboat Toke Committee, who describes Saraceno as working even prior to opening of the facility "diligently on his own time to setup our payroll system in accordance with the Casino Control Commission rules and regulations." She describes herself as holding a "high personnel regard for Jim, who has always helped me with my chairperson duties."

Reginald Miller, a casino shift manager, described Saraceno as being of the "highest character, trustworthy and reliable. He is an asset to the employees of the Showboat Hotel and Casino," a person of the "highest morale fiber, earning the respect of all his fellow employees."

Dolores Mann, an assistant deputy public defender employed by the Department of the Public Advocate in the Union Region, Elizabeth, New Jersey, writes that she has known Saraceno for 25 years both professionally and socially and has always found him "reliable, trustworthy and hardworking." She states "I have no reservations saying that I have only known him to be honest and of high character." Additional letters from other employees of the Showboat, including pit bosses, shift managers and a pit manager, as well as from other outside acquaintances, all speak highly of Saraceno's character and integrity.

DISCUSSION

In 1986 Mr. Saraceno, an individual who apparently prior to that date had a spotless record in the industry since his original licensure in June of 1978, committed an action which can only be described as stupid and dishonest. Stupid because it was done without any apparent attempt to seek any assistance from anyone other than the seemingly uncooperative individual to whom the forms were being turned in despite indications that there were other avenues within the Bally's organization which could have provided counseling and assistance; dishonest because without question Saraceno's intent was to deceive his employer into providing some benefits by the submission of false documentation. Even if Saraceno was ultimately entitled to receive the monies which he was attempting to get, there can be no question but that the way in which he went about attempting to get it was deceitful. As the Bally's report of the incident indicates, Saraceno was at that point told that "two wrongs do not make a right." Surely that is true.

From everything else about Mr. Saraceno's past it appears that his conduct in connection with the submission of these fraudulent documents was aberrational. Both before and since the incident he has worked in the casino industry without any apparent difficulty, has held positions of trust both from the Commission, which has granted him a casino employee license, and within the casinos themselves, where he has served both in supervisory capacities and also in the role of a highly respected representative of the employees in connection with the Toke Committees at both Bally's and Showboat. There can be no question but that his fellow employees, as

well as his employers, have seen fit to reside great trust in Mr. Saraceno. It is unfortunate that in 1986 he failed to live up to the trust given to him.

The question is whether at this time Saraceno has the requisite good character, honesty and integrity for licensure as a casino employee. He must prove this by clear and convincing evidence. Based upon what has been presented, I have no doubt that Mr. Saraceno's mistake will not be repeated. There are instances where individuals faced with certain pressures will cave in to them, will be unable to deal with them, and will as a result do foolish and sometimes even illegal things. Mr. Saraceno gives every indication that he has learned from his lesson. When he filled out the application in 1987 and did not list that he had been asked by his employer to leave, he was perhaps technically correct, although there is no question but that the spirit of the question should have required him to answer that he was in fact asked to leave by Bally's. However, since that time I sense that Saraceno has recognized the wrong procedure that he followed in seeking what in fact may have been due to him and I have no question that he will not repeat this error.

The good character references received do not specifically indicate whether the individuals are aware of the circumstances under which Saraceno left Bally's. There is no doubt that the individuals involved hold Mr. Saraceno in an extremely high regard. Based upon the evidence presented and the circumstances, I am convinced that at this time he does have the good character, honesty and integrity required for licensure. It is therefore **ORDERED** that his license be renewed.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 19, 1990
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

6/21/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 22 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

1137

EVIDENCE LIST

On behalf of petitioner:

P-1 Letter of May 1, 1990 from Catherine O'Leary

P-2 Letter of May 15, 1990 form Reginald Miller

P-3 Letter of November 28, 1989 from Dolores Mann, Esq.

P-4 Letter of September 20, 1989 from James Sattazahn

P-5 Letter of September 25, 1989 from Ronald Spisso

P-6 Undated letter from Ronald Grimsley

P-7 Letter of September 21, 1989 from Bay(?) De Marco

P-8 Undated letter from Richard S. Tesler

P-9 Letter of September 20, 1989 from Rusty Miller

P-10 Letter of September 13, 1989 from Alred J. Avellino

P-11 Letter of September 13, 1989 from Frederick J. Harb

On behalf of respondent:

R-1 Investigation Report complied by Agent Falco

R-2 Bally's Memo dated December 11, 1986

R-3 Employee License Renewal Application for Renewal Year 1987-1990

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-351
APPLICATION NO. 084557-21
OAL DOCKET NO. CCC 03697-90
ORDER NO. 90-46-10

APPLICATION OF THOMAS E. SCHAFFER, JR.
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 November 21, 1990,

IT IS on this 3rd day of December 1990, ORDERED that the initial decision is adopted; 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.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3697-90

AGENCY DKT. NO. 90-EA-351

THOMAS E. SCHAFFER, JR.,

Petitioner,

v.

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

Respondent.

G. Michael Brown, Esq., for petitioner (Greenberg Margolis, attorneys)

James J. Armstrong, Deputy Attorney General, for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: August 31, 1990 Decided: October 15, 1990

BEFORE **JOHN R. FUTEY, ALJ:**

STATEMENT OF THE CASE

Petitioner, Thomas E. Schaffer, Jr., applied to the Casino Control Commission (Commission) for the issuance of a casino employee license. The respondent, Division of Gaming Enforcement (Division) opposed the issuance of the license by reason of its contention that, as a prior law enforcement officer, petitioner had sworn to uphold the law at the time of his arrest (prior to his employment in the casino industry). As a result, the Division objected to the licensure of petitioner as a casino employee pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b). Petitioner contends that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

Petitioner filed with the Commission an application for the issuance of a casino employee license so that he could be employed in the full scale security operations of the casino industry. By letter to the Commission dated March 28, 1990, the Division objected to the petitioner's application for licensure as a security employee. On May 7, 1990, the Commission transmitted the matter to the Office of Administrative Law (which received it on May 11, 1990), 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 matter was listed for hearing and heard on August 23, 1990 at the OAL, Mercerivell, New Jersey. The record remained open until August 31, 1990 in order for this tribunal to receive additional documents on behalf of petitioner. The hearing record closed on that date.

FACTUAL DISCUSSION

The essential facts in this matter are not in dispute. Petitioner's application disclosed an arrest in 1966 for aggravated assault (comparable to N.J.S.A. 2C:12-1(b)) in Camden, New Jersey. In addition to that, petitioner indicated that he had fired a rifle within the city limits and had been charged with disorderly conduct. However, the Division could not obtain any further details regarding the arrest. Petitioner indicated at hearing that he was mistaken regarding the matters having resulted in an arrest. Rather, he erroniously indicated that an arrest had followed the incident. Instead, he indicated that he was only investigated as a result of the incident and that no formal charges were ever filed.

Petitioner was arrested on April 28, 1969 and charged with possession of narcotics, a charge comparable to N.J.S.A. 2C:35-10. The Division contends that the petitioner was subsequently indicted on the charge, which was later dismissed. Petitioner contends that the matter did not result in an indictment. Rather, he entered pretrial intervention as a result of a direct complaint. The charge, in any event, resulted from a party which petitioner threw at his apartment for 24 people after he had been employed several months by the Camden Police Department. The party was meant to celebrate the class graduation from the county police academy. After the party, one of the attendees

stated that he had smelled marijuana at the party. Although an investigation and arrest resulted, he was later found not guilty of any offense. Petitioner was fully reinstated to his police position with full back pay.

On or about August 4, 1988, petitioner was arrested by the Camden Police Department for possession of controlled dangerous substance (cocaine) in violation of N.J.S.A. 2C:35-10. The arrest occurred when petitioner attempted to purchase $65 worth of cocaine for recreational use. At the time of that arrest, petitioner was then a 20-year veteran of the Camden Police Department. As a result of a civil service hearing conducted before Administrative Law Judge Steven Carnes, a settlement was entered into between petitioner and the City of Camden whereby petitioner would receive a resignation in good standing and, further provided that he not seek any employment with any law enforcement agency in New Jersey. He then entered and successfully completed the pretrial intervention program, as a result of which the charge was dismissed against him on May 8, 1989.

Petitioner indicated that prior to the incident involving cocaine, he had become increasingly afraid of his job as a street policeman. In March 1987 petitioner became involved in an investigation involving a hostage situation. He was summoned from across town to the scene of the hostage taking at which time, absent the presence of any senior officers, he took charge of the hostage situation on behalf of all of the officers who were then assembled at the scene. After assessing the situation, petitioner went up to the front door of the home and, upon discussing this matter with the woman who appeared at that location, he immediately grabbed her and pulled her away from the door. It was then determined that a man inside the home held various other hostages at bay with a shotgun and other weapons. As petitioner pulled the lady away from the door area, the hostage taker appeared at an upper story window, held a five-year-old girl by her feet and threatened to do harm to her. He then let go and the girl dropped head first to the ground, sustaining various serious injuries. He was ultimately subdued and placed under arrest by the police team at the scene. As a result of the incident, petitioner received commendations from the Camden Police Department (P-5), the Camden County Prosecutor's office (P-6), and the New Jersey State Senate (P-7). However, as a result of the incident, petitioner's nerves began to wear on him and he became increasingly despondent and frightened about his role as a city officer. Subsequently, he investigated other Camden shootups, including a situation in which a cab driver had been shot in the

stomach. Although petitioner needed significant help to deal with his emotional problems and his declining professionalism, there were no programs in place at the Camden City Police Department at the time. (It is noted that, subsequent to petitioner's involvement with cocaine in 1988, the Department has in fact instituted such programs.) Petitioner also was feared going to his supervisors, from whom he feared retaliation. As a result, he turned to the use of alcohol and, subsequently drugs on a recreational basis. Although his alcohol consumption had begun in 1986, his use of drugs only commenced after the 1987 hostage crises, at which time another officer had introduced him to the use of cocaine.

After his arrest in 1988, he voluntarily entered the Malvern Institute, Pennsylvania, for a 28-day inpatient program. He then entered various after care programs as follows: (a) Turning Point (Starting Point) - four months, (b) Narcotics Anonymous and Alcoholics Anonymous meetings on a regular basis. Initially he attended three to four times a day and has now reduced them to once each week. (c) The 1033 Club, which is a support group for policemen, firemen and medics, who have abuse problems, (d) once a month check ups back at Malvern, (e) Department of Labor, Division of Location Rehabilitation counselling, which gave him jobbing techniques as well as a referral to a psychiatrist (Dr. Harp, who saw him 20 times during the course of one year. He has been treated for post-traumatic stress disorder through that program).

Petitioner contends that he has used no alcohol and no drugs since August 4, 1988. He has also previously consulted with Maurice L. Hayes, M.D., regarding his post-traumatic stress disorder (P-4). He has since been discharged from Dr. Hayes.

The Division also cited the fact that petitioner's name appears on a charge off account with the First People's Bank in the amount of $899, which event occurred in 1974. Petitioner contends that he was not aware of that particular billing, since his former wife had been responsible for maintaining the account all along. His former wife had also suffered from alcoholism. He is the parent of three adult boys, ages 25, 24 and 18. He helped both older boys go through college and is presently assisting his youngest child who is attending Philadelphia Textile College. He claims to be on good terms with all boys.

Subsequent to his divorce from his first wife, petitioner married his wife Kathleen, on December 29, 1986. She has known him however, for a period of eight and

one-half years, during which time she has had an opportunity to observe him in his various stress-related situations. She corroborated the fact that on three occasions petitioner attempted to ask his Captain for help but choked up and failed to follow through with the request for assistance. He has also begged his captain to get him off the streets. His captain assured him that he would grant him his request and place him in the Juvenile Detective Bureau, at a time when the captain would become chief of police. However, that event did not occur until after petitioner's drug arrest in 1988.

Kathleen also reported that she has a ten-year-old daughter by her previous marriage, whom petitioner intends to adopt.

Frank Falco has been employed by the Taj Mahal since November 1989 and prior thereto by the Playboy Casino as a security supervisor. He first became acquainted with petitioner in November 1989, at which time there were fellow officers. Falco is presently petitioner's supervisor. He observed that petitioner is an above average security officer, based upon his experience and maturity. He has seen absolutely no problems in petitioner's performance and recommends him highly for advancement. However, because of the limitation placed upon his ability to secure a casino license to date, petitioner has been passed over five times for supervisory positions. Petitioner's attendance is good and he performs up to task. In view of the limitation placed upon him to date, petitioner has only been able to work the hotel side of security, and particularly the employee parking lot area. Falco sees this as a very important job because it requires someone who is able to remain alert at all times and capable of handling a multitude of potential problems. He has recommended petitioner for casino security work.

John L. Pickering originally met petitioner through Alcoholics Anonymous, at which time Pickering was petitioner's sponsor. In that capacity he has known him for approximately two years and has had a periodic opportunity to observe petitioner's performance from a distance. He has noted that petitioner has always performed well and has never seen petitioner consume alcohol.

LAW, ANALYSIS AND FINDINGS

The Division contends, by means of section 89(b)(2) and 90(b) of the Casino Control Act, that petitioner's admission of the use of recreational use of cocaine while employed as a law enforcement officer calls into question his good character, honesty and integrity.

Needless-to-say, the Division's initial concern in that regard is understandable since petitioner is seeking licensed entry into an industry which demands a high level of good character, honesty and integrity. As a result, it is necessary to scrutinize petitioner's background in order to assess his ability to have embraced those necessary qualities before one can consider any recommendation regarding his employment in the casino control industry.

To that end, this tribunal has closely evaluated the proofs offered in this case as well as the explanations afforded by petitioner regarding his past misconduct. Based upon all the factors presented, I am satisfied and **FIND** that petitioner presented a satisfactory explanation regarding the investigation/incident which took place in 1966 as well as the alleged incident which took place at the police academy party in 1969. In both cases, petitioner has demonstrated that his good character was not otherwise compromised.

The arrest for possession of cocaine in 1988 requires a much closer evaluation since the incident occurred at a time when petitioner was then actively employed in law enforcement in Camden County after a period of some 20 years of veteran service. There is no doubt in the mind of this tribunal that even the recreational use of cocaine is a serious matter impacting upon one's good character. However, this tribunal **FINDS** that petitioner has afforded a reasonable and realistic explanation for having delved into this prohibitive area when he did. There is also no doubt in the mind of this tribunal that petitioner underwent a massive decline in his own personal character as a result of having been exposed to long-term pressures as a city policeman. I **FIND** that the stresses of that job are enormous on even a regular basis. It is apparent that petitioner was in the process of suffering burnout over an extended period, which decline was magnified when petitioner became involved in the hostage taking situation in 1988. Petitioner was literally under fire and jeopardized his own safety for the benefit of the public at large.

In addition, to have witnessed a child having been dangled out of upper story window and then let go by such a sick criminal mind as the hostage taker leaves no doubt that that incident put petitioner over the edge. Yet, for all of his immediate decline, he was just as frightened to approach his own superiors regarding his problem. I **FIND** that absent a declared program of nonattribution on the part of the Camden City Police Department at the time, petitioner would have placed himself in extreme professional peril by announcing his problems to his superiors. Further, I find that the Camden City Police Department lacked a comprehensive program to address stress related problems of its street officers and this enlarge part propelled petitioner even farther down the road toward his own self distruction.

The events which occurred on August 4, 1988 may in fact have ultimately saved petitioner's life, since petitioner bottomed out at that time. Yet, he had the character and strength to rise above the ashes, seek professional help on a long-term basis, and come to grips with the poisons associated with recreational drug use. Petitioner demonstrates a fine history of rehabilitation in that regard and offers all of us a reasonable assurance that he has conquered his worst problems in that regard.

I also **FIND** that petitioner's work history since that time has been exemplary and further demonstrates his renewed self assurance and good character. This tribunal firmly believes that petitioner is in fact a good police officer and, although he can no longer work in that regard in any law enforcement agency in New Jersey, there is no reason to deny him utilization of his extensive talents in the security field.

Finally, I **FIND** that petitioner's positive life style regarding his wife, his soon-to-be adopted daughter, as well as his three natural sons also demonstrates an ongoing commitment to his family. Were this petitioner to have been so gripped by the use of drugs, it is extraordinarly doubtful that he could have maintained such an intact family unit as he has. It is obvious that he has a family which supports him and loves him. It further indicates to this tribunal that even at hs lowest times, petitioner never really abandoned his family. Rather, he attempted to come to grips with his problem and has in fact succeeded. Finally, I am satisfied that petitioner had no direct involvement with the bad debt which was incurred by his former wife. Rather, he was merely on the receiving end of a destroyed marriage. He should not suffer any adverse consequences because of that bad debt.

CONCLUSION AND ORDER

Based upon all the foregoing, I **CONCLUDE** that petitioner has established, by clear and convincing evidence, his good character, honesty and integrity in this matter. It is hereby **ORDERED** that the application of Thomas E. Schaffer, Jr., for the issuance of a casino employee license be and is hereby **GRANTED.**

This recommended decision may be adopted, 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 15, 1990
DATE

JOHN R. FUTEY, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 18 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

gjb

DOCUMENTS IN EVIDENCE

For petitioner:

P-1	Letter from State Department of Labor to Thomas Schaffer, dated March 2, 1990
P-2	Letter from Camden County Probation Officer to petitioner, dated April 13, 1989
P-3	Order of dismissal re petitioner, dated May 8, 1989
P-4	Letter from Maurice L. Hayes, M.D., to Department of Treasury, dated October 3, 1989
P-5	Commendation of merit from Camden County Police Departent to petitioner
P-6	Letter of commendation from Camden County Prosecutor to petitioner
P-7	Citation from the New Jersey State Senate to petitioner

For respondent:

R-1	Personal history disclosure form of petitioner
R-2	Report of criminal investigation

WITNESSES

For petitioner:

Thomas E. Schaffer, Jr.
Frank Falco
Kathleen Schaffer
John L. Pickering

For respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-196
LICENSE NO. 71468-21
REGISTRATION NO. 056945-40
OAL DOCKET NO. CCC 00426-90
ORDER NO. 90-39-11

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

Complainant,

ORDER

v.

GARY J. SEGARS, JR.,

Respondent.

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 3, 1990,

IT IS on this 16th day of October 1990, ORDERED that the initial decision is rejected and the Commission finds as follows:

(1) The ALJ erred in separately applying the rehabilitation factors of N.J.S.A. 5:12-90(h) and 91(d) to the two offenses which the Division alleged rendered the respondent unsuitable for licensure. That is, in considering whether the respondent was rehabilitated from his 1988 conviction for aggravated assault, a disqualifying offense pursuant to N.J.S.A. 5:12-90(h), the ALJ did not

consider the effect of the respondent's conviction for theft by unlawful taking, which the Division contended was a disqualifying "inimical" offense under N.J.S.A. 5:12-86(c)(2). This compartmentalized approach yielded an improper result;

(2) Although the ALJ recognized that the respondent was estopped from relitigating the underlying facts of his municipal court conviction for theft by unlawful taking (Matter of Tanelli, 194 N.J. Super. 492, 498 (App. Div. 1984)), the ALJ thereafter found that the respondent had not acted out of a plan to defraud but rather out of "mistake and ignorance,"

Thus, in the opinion of the ALJ, the respondent was guilty only of an unknowing violation of casino policy. These findings are in fatal conflict with the municipal court's finding that the respondent committed theft by unlawful taking;

(3) Upon evaluation of all the rehabilitation criteria of both N.J.S.A. 5:12-90(h) and 91(d) to the facts of this case, the respondent is not rehabilitated from his conviction for aggravated assault, and is therefore disqualified pursuant to N.J.S.A. 5:12-86(c)(1). By reason of his conviction for theft by unlawful taking in the course of his duties as a slot booth cashier, the respondent is also disqualified pursuant to N.J.S.A. 5:12-86(c)(2); and

(4) Notwithstanding these rulngs, the Commission concurs with the ALJ's alternative recommendation that the

respondent's disqualification should be waived pursuant to N.J.S.A. 5:12-91(e) to permit him to retain his casino hotel employee registration. Although the respondent failed to establish his rehabilitation to the clear and convincing standard, the evidence he presented is sufficient to find interests of justice which warrant waiver of his disqualification under section 91(e).

IT IS FURTHER ORDERED that the respondent is found disqualified from holding a casino employee license and casino hotel employee registration substantially for the reasons stated herein; and

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked but the disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit him to retain his casino hotel employee registration and he remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91; and

IT IS FURTHER ORDERED that Gary J. Segars, Jr. is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

BY: Dennis Daly

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC-00426-90

AGENCY DKT. NO. 90-196

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

Petitioner,

vs.

GARY J. SEGARS, JR.,

Respondent.

JAMES J. ARMSTRONG, Deputy Attorney General for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

GARY J. SEGARS, JR., pro se, respondent

Record Closed: August 10, 1990 Decided: August 10, 1990

BEFORE **JOSEPH E. KANE, ALJ:**

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) seeking revocation of respondent's casino employee license #71468-21 and casino hotel employee registration #56945-40. The Division alleges, among other things, that respondent committed acts which constitute a statutory disqualifer for licensure and that respondent's continuing licensure would be inimical to the policies of the Casino Control Act and the gaming industry in general and that he lacks the requisite good character, honesty and integrity required of license holders.

PROCEDURAL HISTORY

The Division filed its complaint on December 13, 1989. Respondent requested a hearing on December 22, 1990 and on January 11, 1990 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on May 25, 1990 by Jeff S. Masin, ALJ followed by a hearing which was held on July 13, 1990. The record was closed on August 10, 1990.

ISSUES

The issues to be determined by this tribunal are as follows:

A. Has Mr. Segars engaged in conduct which would automatically disqualify him from licensure, namely, has he engaged in aggravated assault (third degree) for which he was supposedly convicted on January 9, 1989? Does this automatically require his disqualification from licensure and registration pursuant to N.J.S.A. 5:12-86(c)1?

B. Has Mr. Segars rehabilitated himself from any disqualification resulting from the aggravated assault and is he thus eligible for licensure and registration pursuant to N.J.S.A. 5:12-90(h) and 91(d)?

C. Does Mr. Segars have the good character, honesty and integrity required for licensure as a casino employee by N.J.S.A. 5:12-89(b)(2), incorporating 90(b)?

D. Would Mr. Segar's continued licensure or registration be inimical, that is, against the policies of the Casino Control Act and the interests of the casino industry, thus requiring revocation pursuant to N.J.S.A. 5:12-86(c)2?

E. With respect to the hotel registration, does the evidence and the facts involved in this case indicate that it is one in which the interests of justice would require that any disqualification be waived, as provided by N.J.S.A. 5:12-91(e).

FINDINGS OF FACT

Respondent, Gary J. Segars, is a 24 year old married male who currently supports a wife and two daughters, approximately one and a half and three years old. The facts presented at the

hearing clearly demonstrate the debilitating effects that a seven year alcohol and drug addiction had on Mr. Segars' casino employment career and his family life. Mr. Segars' addictive behaviour caused him to be involved in criminal activity to which the Division alleges he should now be disqualified pursuant to 86(c)1 of the Act from holding a casino license and hotel registration.

Mr. Segars began his casino career in 1984 at the age of 18 years old as a bus person in a hotel restaurant. He, as well as his father, held aspirations then and now that he would eventually work his way up to an upper level casino management position. He remained in various restaurant positions in Trump Castle and Atlantis until qualified in 1987 to deal craps at which time he gained employment with Bally's Park Place.

Mr. Segars held eleven different positions within the casino industry from 1984 until October of 1989. He was terminated from many of these positions due to excessive tardiness and an inability to perform the functions of the job. According to Mr. Segars, "it's hard to hold a job when you are addicted to alcohol and drugs". "I have lost a lot of good jobs, jobs that I should have today". His addiction effected not only his career but also his home environment. Susana Segars, his wife, described her husband as being irritable and unable to go to work many days at which times she would call in sick for him. She together with Mr. Segars' parents recognized the problem but felt powerless to do anything about it. During this period, Susana Segars stated that her husband only wanted to obtain more

alcohol and drugs, often disappeared with the paycheck and would rarely come home at the conclusion of his shift. "It was a nightmare". Susana Segars first realized that there was a serious problem when her husband was convicted of the first of three drunk driving charges in a period of approximately three years. This was a problem, she learned later through counselling, that she was powerless to change until her husband was ready to face the problem and seek help.

Mr. Segars' problems began, or perhaps ended, the evening of June 1, 1988. The evening began with Mr. Segars and a friend partaking in cocaine and alcohol to the extent that when arrested, he had a blood alcohol content of 0.23. Running out of something to drink, Mr. Segars and his co-defendant, Mario Macellari, left his apartment intent on purchasing more alcohol. Mr. Segars, who was driving, ran his vehicle over the curb while entering a gas station. Present in uniform, was Officer Heinze of the Atlantic City Police Department who, noticing the erratic behaviour, approached the Segars' vehicle for questioning. It was at this point, that a high speed chase ensued North on Route 9 eventually culminating in an apartment house parking lot in Absecon, New Jersey. Officer Heinze pulled Mr. Macellari from the vehicle and a fight ensued. When Mr. Segars exited the vehicle he found Mr. Macellari on the ground with the officer attempting to subdue him. Mr. Segars then pulled the officer off of Mr. Macellari by which time the Absecon police, with guns drawn, ordered Mr. Segars to lie on the ground. Mr. Segars contended that he never

struck the officer.

As a result of the above incident, Mr. Segars pled guilty on January 9, 1989 to one count of aggravated assault, N.J.S.A. 2C:12-1(b)5. He was ordered to serve 180 days in the Atlantic County Jail, pay $1,000 in restitution to Officer Heinze and a $500 penalty. He was assigned to the minimum security wing of the Atlantic County Jail and within 30 days qualified as a trustee and began work in the jail kitchen. While incarcerated, Mr. Segars attended a bible study course and regular alcoholic's anonymous meetings. There were no disciplinary problems with Mr. Segars while in jail and as a result, he qualified for early release on May 17, 1989 serving 72 out of a possible 180 day sentence. As part of his probation, he was required to submit regular urinalysis in order to detect the presence of alcohol or drugs. This portion of his probation was discontinued after seven months due to repeated negative results.

Mr. Segars has been in his own words "replacing former irresponsible, impulsive, addictive behaviour with responsible sober behaviour". Living by the 12 steps of AA, he has been attending an outpatient program at Seabrook House four days a week, three hours a day for a total of 32 sessions. Admitting, that he was powerless over his addiction, he realized that his life had become unmanagable and decided to do something about it. He feels that at the age of 24, he had been an alcohol and drug abuser for the last seven years of his life. As of the date of the hearing, he has refrained from any alcohol and drug use for a period of 14 months straight. Incarceration was the catalyst by

which Mr. Segars obtained sobriety.

Mr. Segars' parents and wife both described a changed individual determined to stay sober and to re-enter the casino industry. His parents "hoped" and "prayed" that their son would be sentenced to jail in order that he could receive the help he so desperately needed. His wife describes him now as a responsible father, considerate husband and never absent or late for work. Mr. Segars' father has observed that since leaving Atlantic County Jail, his son has been current with his rent including the other household expenses. Obtaining his casino license is of great concern to the Segars' since Mrs. Segars is also employed in the casino industry and because of the family's desire to remain in Atlantic County. Other than dealing, Mr. Segars' primary skill is that of a gourmet restaurant waiter with the only such restaurants in Atlantic County being found in the casinos.

Documentary evidence submitted by Mr. Segars support his claims of recovery from addiction. His probation officer states that he is in compliance with the terms and conditions of his probation and a letter from Jeane R. Woerner, a therapist at Seabrook House states that he is committed to his recovery, has been regularly attending self-help sessions.

In August of 1989 Mr. Segars began employment classified as a dual-rate dealer and change person working three days a week dealing craps and two days dispensing change in the slot change booth. When reporting to work on October 1, 1989 he was advised to report to his supervisor's office where he was met by Det.

Lindsay of the Division of Gaming Enforcement. Det. Lindsay was accusing Mr. Segars of theft of $40 during his shift of September 30, 1989. Mr. Segars both before Det. Lindsay and during the course of the hearing freely described the events leading up to the allegation. On that night, Mr. Segars was stationed in the slot change booth. A regular patron of the casino whose name was unknown to Mr. Segars received change at least three times prior to 1:00 A.M. At that time, the patron gave Mr. Segars a $100 bill and exited the slot change booth before Mr. Segars had an opportunity to return his $40. The patron ignored Mr. Segars' calls to him that he had left his change behind. Since the patron had frequented the booth at least three times prior to the 1:00 A.M. change incident, Mr. Segars placed the $40 on top of a cash drawer awaiting his return. By the close of his shift at 4:00 A.M. the patron had failed to claim the change and Mr. Segars placed the money in his back pocket and left. Mr. Segars testified that he had no intention of keeping the money at the time the patron left his change booth, and he was unaware that the casino had a procedure for collecting unclaimed monies. He later learned that the procedure was to place the money in an envelope marked with either the name of the patron or a description of the person, at which time the money would be turned over to his supervisor.

Det. Lindsay continued to press Mr. Segars for his cooperation to arrange an undercover drug purchase within the casino. Mr. Segars refused stating that he was a recovering alcoholic and narcotics user, that he had left that life behind

him and that everyone who associated with him in the casino knew that. Det. Lindsay visited Mr. Segars' mother's house and later Mr. Segars' residence at which time Mr. Segars again refused to participate in a drug buy and told the Detective he would have nothing further to do with the plan. It was not until this point that Det. Lindsay filed a complaint in the Atlantic City Municipal Court. There, on January 3, 1990, without benefit of counsel, Mr. Segars was found guilty of theft, N.J.S.A. 2C:20-3. Mr. Segars contended that during his interview of October 1, 1989 with Det. Lindsay he overheard Det. Lindsay report to Trump officials that "no crime had taken place" and it was only after Mr. Segars refused to participate in a drug purchase that Det. Lindsay then filed the theft compliant.

Mr. Segars had been discharged from Trump Plaza not because of the theft charge, but instead, for failing to follow accounting procedures within the slot change booth. Trump officials in the gaming department immediately hired him to deal craps full time, however, upon learning that he was only qualified in one game, they referred him back to his old position which was no longer available.

Since his discharge from Trump Plaza, Mr. Segars has been employed at Chez Robe'rt Restaurant, a gourmet restaurant in Haddon Township, New Jersey. His position at Chez Robe'rt's is that of front waiter and as indicated by R-4 and R-5, he is considered to be a well qualified, reliable employee who is also responsible for training and supervising other employees. According to Mr. Segars' uncle (R-6) "I have seen the worst of

Gary and now I am seeing the best". This statement summarizes the testimony of his wife, mother and father. Mr. Segars' desire to work in the gaming industry and to remain sober was demonstrated throughout the course of the entire hearing.

ANALYSIS AND CONCLUSIONS OF LAW

Has Mr. Segars committed an offense which would constitute a statutory disqualifier pursuant to 86(c)1 of the Act, thus disqualifying him from holding both a hotel registration and casino license.

Pursuant to Section 5:12-1(b)8 of the Act, it is established 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 or other sanctions against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding their license." The Division contends that Mr. Segars' conviction for aggravated assault on January 9, 1989 constitutes a statutory disqualifier pursuant to 86(c)1 of the Act both as to his hotel registration and casino employee license. Section 86(c)1 of the Act states:

> "The conviction of the applicant, or any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of

the New Jersey Statutes) as amended and supplemented: N.J.S. 2C:12-1b. (aggravated assault which constitutes a crime of the second or third degree).

I **FIND** that Mr. Segars' commission of aggravated assault in violation of N.J.S.A. 2C:12-1b constitutes a statutory disqualifier pursuant to 86(c)1 of the Act and accordingly is disqualified from holding a hotel registration as well as a casino employee license.

Has Mr. Segars demonstrated his rehabilitation by clear and convincing evidence.

Mr. Segars, who has committed a disqualifying 86(c)1 offense is afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating by clear and convincing evidence his rehabilitation pursuant to Section 90(h) and 91(d) of the Act. In order to retain his hotel registration, it is necessary for him to demonstrate rehabilitation, however, his casino employee license may only be retained if in addition to rehabilitation, he is able to show by clear and convincing evidence that he possesses the requisite good character, honesty and integrity required of a licensee pursuant to Section 89(b)2. Accordingly, the analysis set forth below will address the rehabilitative factors necessary for both the registration and casino employee license.

In Section 90(h) and 91(d) of the Act, the Legislature has set forth eight specific criteria to be considered and evaluated by this tribunal where a determination of rehabilitation is to be

made. The specific eight factors are:

1. The nature and duties of the position applied for;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the applicant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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.

In consideration of Mr. Segars' claim of rehabilitation, the following facts are found in this record.

1. Mr. Segars is currently the holder of casino employee license #71468-21 and casino hotel employee registration #56945-40. He has held since 1984 eleven different positions in various casinos both in the hotel and on the casino floor. He has also lost many of these jobs, not because he was not otherwise qualified for the positions, but instead he was fired as a result of excessive tardiness or no-shows on account of his alcohol and drug addiction. Removing that factor, he thus possesses the requisite qualifications for a position either within the hotel or on the casino floor.

2. The offense of aggravated assault, N.J.S.A. 2C:12-

1(b)(5) is a crime of a serious nature especially when considering that the offense took place against a police officer. His addiction cannot be utilized as a reason to justify or in any way to explain away his behaviour the night of June 1, 1988. The offense thus, must be considered of a serious nature thus requiring Mr. Segars to demonstrate through the other seven factors herein his rehabilitation by clear and convincing evidence.

3. Although the offense must be considered serious, the circumstances surrounding the incident mitigates slightly in Mr. Segars' favor, he had never been arrested or involved in any other criminal activity, exclusive of three DWI instances, prior to June 1, 1988. His blood alcohol content was 0.23. He attributes his behaviour to his addiction which must be considered as a plausible explanation since it is very unlikely that any individual who had never been involved in violent behaviour in the past would engage in such but for the fact of extreme intoxication. Mr. Segars involvement in the matter was not to fight with the officer directly but instead to remove the officer from his co-defendant. Alcohol and drugs were clearly a catalyst for Mr. Segars' irrational behaviour.

4. The aggravated assault occurred on June 1, 1988.

5. At the time of the assault Mr. Segars was 22 years old. He is now 24 years old. From the testimony presented, it is apparent that Mr. Segars was a very young and extremely immature 22 year old when the assault occurred. Although only two years have passed since the date of the assault, testimony

presented warrants a finding that he has greatly matured during that time period. He has replaced immature, impulsive, addictive behaviour with sober behaviour and is now capable of setting and maintaining goals. He has matured financially in that his rent is paid on time and he is now anticipating the purchase of a home with his wife in approximately one year.

6. The aggravated assault offense was a one time transgression apparently induced by immature and addictive behaviour. Under the current circumstances, it is unlikely that such an offense or behaviour would be repeated.

7. The next inquiry is whether any social conditions played in the commisison of the offense. This can include any family circumstances or external peer pressure which resulted in or influenced the individual to commit the offense. Mr. Segars both then and now is surrounded with a loving supportive family. The debate continues as to whether alcohol and drug abuse is a result of heredity or external social pressures. In this instance, the social condition partially responsible for the commission of the offense was Mr. Segars association with other friends who themselves exhibit immature addictive behaviour, specifically his co-defendant, Mario Macellari. Mr. Segars admitted this fact and indicated during the hearing that he no longer associates with individuals of this ilk and specifically his former friend and best man, Mario Macellari.

8. Mr. Segars demonstrated while incarcerated that he was an individual who was concerned with his rehabilitation and who could be trusted. He was housed in the minimum security section

of the Atlantic County Jail and obtained the status of trustee, eventually serving 72 out of a possible 180 day sentence. His rehabilitation from alcohol and drugs began in jail and as set forth above, has continued to this day. He works hard at his rehabilitation which is clearly demonstrated by his attendance four days a week, three hours a day for a total of 32 sessions at Seabrook House. He is currently successfully employed at Chez Robe'rts and has earned the respect of his employer, Robert Sliwowski (R-4) and fellow co-workers (R-5). He has been straight for 14 months as of the date of the hearing which is a commendable period of time considering the nature and extent of his addiction. As a result, he is now successfully supporting his wife and two children.

During the course of the hearing, I found Mr. Segars to be a polite, credible, and sincere individual who is determined regardless of the outcome of the instant matter to continue his rehabilitation. As set forth above, I found that the crime of aggravated assault committed by him is one of a most serious nature and it is only through his extraordinary demonstration by clear and convincing evidence of his commitment to sobriety that leads me to **CONCLUDE** and to so **FIND** that Mr. Segars has affirmatively demonstrated his rehabilitation.

Whether Mr. Segars' continuing licensure would be inimical to the Casino Control Act and the gaming industry pursuant to 86(c)2 of the Act.

In order to retain his casino employee license #71468-21 Mr. Segars, in addition to rehabilitation under Section 90(h) of

the Act, must also demonstrate his good character, honesty and integrity pursuant to Section 89(b)2 of the Act. However, if it is first determined that his continuing licensure would be inimical to the Casino Control Act and the gaming industry, it would be unnecessary to reach the issue of his good character, honesty and integrity. Thus, the inimical analysis would be considered first. It must be observed, that a determination of inimicality would preclude Mr. Segars, not only as a casino employee but also as a hotel registrant. It must be noted, however, that despite a determination of inimicality, it is possible for an individual to retain his or her hotel registration provided that the extraordinary relief of waiver is granted by the Casino Control Commission pursuant to Section 91(e) of the Act. The issue as to whether a waiver should issue is discussed below.

Section 86(c)2 of the Act states:

> "Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10 year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing."

Whether an individual's conduct rises to the level of inimicality to the Act and legalized gaming depends upon the

circumstances of each case. The factors to be weighed and considered are the nature of the offense, the circumstances surrounding the offense including mitigating and aggravating factors, the amount of time that has passed from the offense to the date of the hearing. See Davis vs. Division of Gaming Enforcement, 8 N.J.A.R. 301 at 313. Included in this analysis are the eight factors set forth in Section 90(h) and 91(d) of the Act. It must be emphasized that an individual cannot affirmatively demonstrate rehabilitation pursuant to 90(h) and 91(d) of the Act in order to overcome the disqualifying offense of inimicality set forth in section 86(c)2. Nevertheless, the enumerated rehabiliation factors set forth in Sections 90(h) and 91(d) of the Act can be utilized in the inimical analysis in order to determine whether an individual must be disqualified from participation in the gaming industry. Applying these factors to the facts of the instant matter I **FIND** as follows:

1. Nature of the offense.

The complaint filed in the Atlantic City Municipal Court alleges in sum, that Mr. Segars "shortchanged" a patron in the sum of $40. Mr. Segars' unrefuted testimony was that he had no intention to shortchange the patron. This is corroborated by his actions since he called to the patron when realizing that the patron was leaving without receiving the full amount of change and that Mr. Segars then put the $40 aside (on a shelf) anticipating that he would return by the conclusion of his shift. This tribunal does not have the authority to overturn the guilty finding entered on January 3, 1990. Mr. Segars is precluded from

litigating the facts upon which a previously adjudicated judgment of conviction was based. See Matter of Tinelli, 194 N.J. Super. 492, 498 (1984). However, this tribunal does have the authority to question and otherwise inquire into the circumstances surrounding the offense and subsequent finding of guility.

2. Circumstances surrounding the offense.

Testimony presented at the hearing demonstrates that the Division of Gaming Enforcement detective after interrogating Mr. Segars, reported to Trump Plaza officials that no crime had taken place. It was only after Mr. Segars refused to consent to the demands of the DGE officer that the municipal court complaint was filed. This unrebutted testimony must stand provided that both Mr. Segars and his version of the incident are considered credible by this tribunal. The party who has the burden of proof in an administrative hearing must prove the case by a preponderance of the credible evidence. This tribunal must, therefore, decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of the truth. Jackson vs. D. L. & W. R.R., Co., 111 N.J.L. 487, 490 (E. & A. 1933). The evidence is found to preponderate if it establishes the reasonable probability of fact. Jaeger vs. Elizabethtown Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup.Ct. 1940). Where the standard is, as in the instant matter, a reasonable probability (preponderance of the evidence), the evidence must be such as to generate the belief that the tendered hypothesis is in all human likelihood the fact. Loew vs. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959)

certif. den. 31 N.J. 75 (1959), overruled on other grounds, 36 N.J. 487 (1962). Mr. Segars was interviewed by the DGE detective on October 1, 1989. The municipal court complaint was not filed until October 19, 1989 almost three weeks after the incident. This time factor corroborates Mr. Segars' contention that the municipal court complaint was a sort of damocles over his head which would only be removed when he refused to cooperate with Det. Lindsay's plan. Under the facts and circumstances of this matter, I **FIND** Mr. Segars' testimony to be credible and believable. He did not set out intentionally to defraud a patron of his change instead, he unknowingly violated company policy in that he did not remit the $40 to his supervisor.

3. Seriousness of the offense.

I do not consider the offense to be of a serious nature since the act was not committed as a result of any plan or scheme to defraud either a patron or the casino industry. It was an offense that occurred out of mistake and ignorance. As such, it is clearly distinguishable from those crimes wherein the individual clearly intends to defraud a patron or to otherwise perform an act which could simply not be tolerated if the integrity of the gaming industry is to be maintained.

CONCLUSION

In analyzing whether Mr. Segars' actions fall within the inimical category of Section 86(c)2 of the Act, the question must

be asked whether the offense committed by him is likely to be repeated. If the factors which contributed to the offense remain ever present, then allowing that individual entry into the industry would be inimical both because of the potential for the act to be repeated and because of the public's perception that repetitive conduct of this nature is condoned.

I **CONCLUDE** that based upon the factors as set forth above, Mr. Segars' continuing licensure both as a casino employee and hotel registrant would not be inimical to the interest and policies of the Casino Control Act or the gaming industry in general.

> Does Mr. Segars possess the requisite good character, honesty and integrity required of a casino license holder by Section 89(b)2 of the Act.

Whenever the Division of Gaming Enforcement raises as an issue the good character, honesty and integrity of the respondent, it is then respondent's burden to show by clear and convincing evidence that he possesses the requisite good character, honesty and integrity required for licensure under the Act. In accordance with the strict regulatory provisions intended by the legislature it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure. Clear and convincing falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here the trier of fact should have a firm belief that the facts

presented by respondent are true. The standard requires more than the mere balancing of probabilities but less than absolute certainty. A reasonable certainty is required. Lapre vs. Caputo, 131 N.J. Super. 118 (Law Div. 1974).

Mr. Segars produced three witnesses, all of which were family members, to attest to his good character, honesty and integrity. In general, it is expected that family members would provide glowing flattering testimony regarding the applicant. Accordingly, when evaluating the weight which must be accorded to such testimony the familiar relationship must be taken into consideration. In the instant matter, however, Mr. Segars' family members testified not only to his good character, honesty and integrity but also to his lack thereof during the period of his addiction. From this testimony, it can be adduced that Mr. Segars' is now a strong individual committed to rehabilitation and abstinence from alcohol and drugs. That he is a supportive loving father and husband and that according to his father even during the period of his addiction, he could be trusted with money. Other letters produced at the hearing, R-4 and R-5, demonstrate that he is a hardworking, competent and reliable individual. These above traits must be weighed against the incident which occurred in the slot change booth on September 30, 1989. Mr. Segars' actions that night could be considered more in the nature of a serious mistake in failing to comply with company policy concerning abandoned money rather than rising to the level of criminal activity. The probative weight attributed

to this incident as an aggravating factor is significantly lessened when compared against the mitigating factors adduced through the testimony of this family members, current employer, and his own efforts to gain and maintain sobriety. Such evidence rises to the level to prove that Mr. Segars possesses the requisite good character, honesty and integrity required of a casino license holder.

Does Mr. Segars qualify for the extraordinary relief of waiver pursuant to Section 91(e) of the Act.

Section 91(e) of the Act provides the discretion to the Casino Control Commission to waive any disqualifying criteria if the interest of justice so dictate.

"The commission may waive any disqualification criterion for a casino hotel employee consistent with the public policy of this act and upon a finding that the interests of justice so require".

There are potentially two disqualifying events which could stand in the way of Mr. Segars' hotel registration. The first is a finding by the Casino Control Commission that he has not rehabilitated himself so as to overcome the 86(c)1 disqualifier and the second is a finding by the Casino Control Commission that his continuing licensure would be inimical to the Act. Should the commission so find, I would hereby recommend that the extraordinary relief of waiver be granted in order to preserve Mr. Segars' hotel registration. But for the 86(c)2 violation of

September 30, 1989, I believe Mr. Segars has demonstrated his rehabilitation especially when viewed against the fact that his addictive behaviour was largely the cause for his criminal activity in June of 1988. This, of course, is only a recommendation since the ultimate decision concerning waiver lies with the Casino Control Commission, however, I must emphasize that in addition to the facts set forth above, I was impressed with Mr. Segars' demeanor, credibility and overall attitude concerning his past behaviour and his now committment to rehabilitation. In this instance, I believe such relief is warranted.

CONCLUSION AND RECOMMENDATION

Based upon the FINDINGS OF FACT AND CONCLUSIONS OF LAW set forth above, I **FIND** that:

1. Mr. Segars committed an offense, aggravated assault, N.J.S.A. 2C:12-1(b)(5) which constitutes a disqualifier pursuant to 86(c)1 of the Act.

2. Mr. Segars has demonstrated his rehabilitation pursuant to Section 91(d) of the Act so as to permit him to retain his casino employee license #71468-21.

3. Mr. Segars continuing licensure is not inimical to the policies and procedures of the Casino Control Act and the gaming industry in general pursuant to Section 86(c)2 of the Act.

4. Mr. Segars possesses the requisite good character,

honesty and integrity required of a license holder pursuant to Section 89(b) of the Act.

5. The extraordinary relief of waiver pursuant to Section 91(e) of the Act should be granted by the Casino Control Commission as to his casino hotel employee registration #56945-40.

IT IS HEREBY ORDERED that Gary J. Segars, Jr. is herein permitted to retain his casino employee license #71468-21 and casino hotel employee registration #56945-40.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

8-10-90
DATE

JOSEPH E. KANE, ALJ

OAL DKT. NO. CCC-00426-90

Receipt Acknowledged:

8/16/90
DATE

Kim Wood
CASINO CONTROL COMMISSION

Mailed to Parties: L. Vecchio

AUG 21 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

pas

OAL DKT. NO. CCC-00426-90

EXHIBITS

FOR PETITIONER:

P-1 ATLANTIC COUNTY INDICTMENT #88-002485;
P-2 JUDGMENT OF CONVICTION DATED MARCH 2, 1989;
P-3 NEW JERSEY STATE POLICE INVESTIGATION REPORT DATED JUNE 19, 1990;
P-4 ATLANTIC CITY MUNICIPAL COURT COMPLAINT DATED OCTOBER 19, 1990;
P-5 CITY OF ABSECON BUREAU OF POLICE ARREST REPORT DATED JUNE 1, 1988;

FOR RESPONDENT:

R-1 CERTIFICATE OF PAROLE DATED MAY 2, 1989;
R-2 LETTER FROM DENEEN DEMCHAK, ATLANTIC COUNTY PROBATION DEPARTMENT DATED JUNE 28, 1990;
R-3 LETTER FROM JEAN R. WOERNER, PRIMARY THERAPIST, SEABROOK HOUSE DATED JUNE 22, 1990;
R-4 LETTER FROM ROBERT SLIWOWSKI, PROPRIETOR OF CHEZ ROBE'RT RESTAURANT DATED JUNE 25, 1990;
R-5 LETTER FROM NICHOLAS BONGIORNO DATED JUNE 29, 1989
R-6 LETTER FROM ROBERT J. SMALL DATED JUNE 24, 1990;
R-7 LETTER FROM GRY J. SEGARS DATED AUGUST 3, 1990;

FOR PETITIONER:

GARY J. SEGARS, JR.

FOR RESPONDENT:

GARY J. SEGARS, JR.
SUSANA L. SEGARS
ROSEMARY COLBURN
GARY W. SEGARS

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 90-500;90-CSI-25
APPLICATION NO. 0318-70
VENDOR I.D. NO. 03010
OAL DOCKET NO. CCC 05096-90
ORDER NO. 90-37-8

RENEWAL APPLICATION OF CHARLES SHAID
OF NEW JERSEY, INC. (QUALIFIER ELLIOT B. SHAID)
AND
STATE v. CHARLES SHAID OF NEW JERSEY, INC.
AND ELLIOT B. SHAID

ORDER

A hearing 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 September 19, 1990,

IT IS on this 27th day of September 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application of Charles Shaid of New Jersey, Inc. is granted and the complaint of the Division of Gaming Enforcement is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Elliot B. Shaid is qualified pursuant to N.J.S.A. 5:12-92(c) and (d);

IT IS FURTHER ORDERED that Commission Order No. 90-25-7 is vacated.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /rm
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 5096-90
AGENCY DKT. NO. 90-500; 90-CSI-25

CHARLES SHAID OF NEW JERSEY, INC.,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.
and
STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
CHARLES SHAID OF NEW JERSEY, INC.,
AND ELLIOT B. SHAID,
Respondents.

Frederick J. McDonough, Deputy Attorney General, for State of New Jersey (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Michael J. Herbert, Esq. and **Paul M. O'Gara**, Esq., for Charles Shaid of New Jersey, Inc., and Elliot B. Shaid (Hannoch Weisman, attorneys)

Record Closed: August 16, 1990 Decided: August 30, 1990

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

This proceeding arises before the Office of Administrative Law following transmittal from the Casino Control Commission. Charles Shaid of New Jersey, Inc. is a painting and wall covering contractor which has, over the last 11 years, performed some 17 million dollars worth of work for various casino entities in Atlantic City. Elliot B. Shaid is one of the principals of the corporation, owner of 24.5% of the stock in Charles Shaid of New Jersey.[1] As a result of certain actions of Mr. Shaid which will be detailed below, the Casino Control Commission must consider whether or not the corporate entity itself and Mr. Shaid as a principal therein are eligible for continued licensure as a casino service industry and as a qualifier pursuant to the provisions of N.J.S.A. 5:12-92c and 95.

The matter originally arose when Charles Shaid of New Jersey, Inc. applied for renewal of its previously issued casino service industry license. Thereafter, the Division of Gaming Enforcement filed a letter complaint in which it objected to the relicensure and sought revocation of the license. The Casino Control Commission considered a Division application for a temporary prohibition against the corporation conducting any business with casino licensees and such an order was granted. Thereafter, Shaid of New Jersey moved for reconsideration of the order and the order was stayed by the Commission until July 19, 1990 to permit reconsideration. On July 20, 1990, the motion for reconsideration was denied by the Commission, which transferred the matter to the Office of Administrative Law as an accelerated proceeding pursuant to the terms of N.J.A.C. 1:1-9.4. A prehearing conference was conducted before Administrative Law Judge Jeff S. Masin on July 23, 1990, and a prehearing order was issued on July 30, 1990. A hearing was then conducted before Judge Masin on August 16, 1990, at the Office of Administrative Law in Mercerville.

THE ISSUES

The prehearing order established the issues as follows.

A. Is the corporate entity qualified for licensure as a casino service industry?

[1]His mother, Minnie, owns 51%, his brother Eugene 24.5%.

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1. Did Mr. Shaid engage in conduct which constitutes an automatic disqualification from licensure pursuant to N.J.S.A. 5:12-86c1 and N.J.A.C. 19:43-1.3c, specifically did he engage in the crime of filing a false federal income tax return, contrary to 26 U.S.C. 7206(1), equivalent to a violation of N.J.S.A. 2C:21-4(a)?

2. If Mr. Shaid is personally disqualified from licensure, may the company nevertheless qualify without his participation?

3. If Mr. Shaid is automatically disqualified, should the Commission, in the exercise of its discretion under section 92b of the Act nevertheless permit licensure of the corporation and of Mr. Shaid, taking into account the standards applicable to a finding of rehabilitation pursuant to N.J.S.A. 5:12-90h and 91c, in accordance with the Commission Decision In Application of Bershad Company, 12 N.J.R. 48 (1989)?

4. If Mr. Shaid cannot be qualified, may the corporation nevertheless be qualified and licensed if Mr. Shaid is removed from any positions in the corporate structure which would require that he be qualified?

EVIDENCE

The evidence presented at the hearing consisted of testimony from witnesses produced on behalf of Mr. Shaid and the corporation. There is no dispute concerning the fact that Elliot B. Shaid was convicted in the United States District Court for the Eastern District of Pennsylvania of a violation of 26 U.S.C. § 7206(1). Indeed, Mr. Shaid pled guilty on February 24, 1989 to a two count Information filed charging him with willfully and knowingly making and subscribing a federal income tax return for the years 1984 and 1986 respectively, which he did not believe to be true and correct and which resulted in his reporting total income which was not in fact an accurate reflection of his actual total income. In fact, the undisputed evidence, including Mr. Shaid's own testimony, reveals that during the years in question, as well as in other years for which he was not charged, Shaid skimmed monies from Charles Shaid of New Jersey, Inc., by writing checks either to himself or to others, endorsing the same, and collecting the money, without reporting these monies as income which he received from the corporation and thus taxable to him. The total amount of money

skimmed was approximately $175,000 and the tax liability to the United States therefrom was in the vicinity of $75 to $76,000.[2]

As a result of his plea to of the Information, Mr. Shaid was sentenced by Honorable Marvin Katz, United States District Judge, to five years' probation and initially fined of $200,000, later reduced to $100,000, with the remaining $100,000 to be "paid" in the form of painting service to be provided free of charge to charitable institutions. In addition, he was assessed a special assessment of $100.

The circumstances surrounding Mr. Shaid's misdeeds and the way in which they were discovered are of some significance. While Shaid does not deny his guilt, his testimony was aimed at presenting the circumstances which surrounded his misdeeds and which he asserts led to them and the steps which he has taken since the time that the skimming occurred to deal with the problems which he believes led him to engage in this misconduct. In addition, evidence was presented concerning Shaid's involvement in the investigation of judicial corruption in the State of Pennsylvania, for the purpose of establishing that he was a cooperative witness in the prosecution of a Pennsylvania judge who was ultimately removed from the bench. All of this evidence of mitigation goes as well to the question of rehabilitation which is to be considered in connection with whether or not both Shaid and ultimately his company can be relicensed and qualified.

Norman T. Kirk, a special agent for the Federal Bureau of Investigation in Philadelphia for 19 years, testified that during the mid-1980's he was assigned to an investigation of alleged corruption in the Philadelphia judiciary. Approximately three years ago, he was involved in the investigation of Philadelphia Common Pleas Court Judge Joseph Braig. This investigation arose out of the ongoing federal examination of the activities of the Roofers Union. In the course of the investigation, Kirk learned of some work done at Braig's residence in Philadelphia, which allegedly involved free labor and materials provided by unions. Kirk discovered that Braig had filed an insurance claim for wind and water damage. He subpoenaed insurance company records and learned that there were two major contractors engaged in the work, one of which was Charles Shaid.[3] He questioned Elliot Shaid, who advised him

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[2]See letter of August 16, 1990 from Owen A. Knopping, Esq.

[3]It is not clear whether this was Shaid of N.J., Inc. or one of the other Shaid enterprises, Shaid of P.A., Inc. or of Del, Inc.

damage claimed was greatly in excess of that likely to have occurred and further investigation eventually determined that Braig had filed a false claim with the insurance company. Mr. Shaid testified before the grand jury on two or three on several occasions concerning the books and records of the company and its involvement in the repair of water damage at Judge Braig's home. The information seemed to indicate that the damage was greatly in excess of that likely to have occurred and further investigation eventually determined that Braig had filed a false claim with the insurance company. Mr. Shaid testified before the Grand Jury on two or three occasions and provided helpful testimony which in Kirk's view made the case "solid." Braig was eventually indicted and pled guilty to charges arising from the filing of the false insurance claim. In Kirk's estimation the testimony provided at the Grand Jury by Mr. Shaid was "critical" and without his testimony it would have been very questionable whether or not Braig would have been indicted. Shaid stood ready to testify at Braig's trial had Braig not entered a plea. In Kirk's view Shaid provided truthful information "right down the line" during both his Grand Jury testimony and at meetings which he and his attorney had with the federal investigators.

On cross-examination, Mr. Kirk acknowledged that at no time did Mr. Shaid volunteer information that he had filed a false income tax return or that he had a gambling problem. At some point during the investigation, Kirk became aware that Shaid had such difficulties. He may have learned this from the IRS agent who was asked to look at the company's books. He also learned of Shaid's skimming activities, probably from the same source.

When first questioned Shaid indicated that he could not recall how much damage he had observed at the Braig residence. He had some difficulty in producing the names of the painters who were involved and subpoenas were issued to the union in an attempt to determine this information. In Kirk's view, it is not unusual for a cooperating witness to initially hold back some information. However, the amount of water damage which actually occurred was critical in his mind and information provided by Shaid was helpful in this regard.

Richard L. Scheff, Esq., presently an associate at the law firm of Montgomery, McCracken, Walker and Rhodes, in Philadelphia, testified that from August 1983 to March 4, 1990 he was an assistant United States attorney associated with the United States attorney's office in the Eastern District of Pennsylvania. Mr. Scheff served as the lead prosecutor in the Roofers Union cases which resulted in the conviction of

numerous Philadelphia judges for corrupt activities. According to Scheff, during the first round of investigations, Judge Braig was a target, but he was not indicted because the prosecutors felt that they would have a difficult time proving a bribery case against him. A continued investigation ensued and through informant information the prosecutors learned of free work performed on Braig's home. This involved the renovation of portions of the home and the construction of a fourth floor and a sun deck for approximately $60,000. The investigation determined that free work and materials had been provided. Braig's bank account was subpoenaed and an insurance settlement check was discovered. An examination of weather records for the alleged date of the damage indicated that there had been but minimal rain and such was unlikely to have caused the extensive wind and water damage claimed. Since this entire situation did not make sense, further records were subpoenaed, including records of one of the principal contractors on the work, Shaid. Because the investigators were unfamiliar with the way in which Shaid's books were kept, they contacted Shaid's attorney. In September 1987 Shaid met with the investigators and helped them put the records together. In the course of the investigation, because of further difficulties in working with the records, the books were turned over to the IRS. They saw that there were checks to Shaid from the company which were not part of the figures reported on Shaid's W-2 forms. As a result, further investigation was undertaken and eventually Shaid provided information to the IRS concerning other checks which they had not uncovered which were part of the monies he had skimmed from the company.

Shaid testified voluntarily before the Grand Jury. Although he did not provide the complete story of everything involved with his activities, he also gave no untruthful information. The witness testified that in his opinion the only reason Shaid did not give complete information was that he was not asked questions which would have brought out more information.

As a result of reviewing the Shaid records, the investigators noticed that Shaid first provided an estimate for work on the alleged damage on August 24, 1983, which was three days before the date that Braig claimed the storm damage had occurred. In addition, Braig had been advising Shaid of water damage on the fourth floor in areas where there was new drywall.

Mr. Scheff observed that Shaid's information "put the investigation over the top." Scheff expressed his doubt as to whether he would have recommended that the Grand Jury indict Braig had not been for the information provided by Shaid.

Shaid was never a target for the Braig investigation. He was offered no immunity for his testimony, although it had been sought by his counsel. Early on, Mr. Scheff had a suspicion that Shaid was actively involved with Braig in a conspiracy to defraud the insurance company. However, he later became convinced that this was not so. In addition, through discussions with Braig's attorney following Braig's plea of guilty he learned that Shaid's testimony had been instrumental in convincing Braig to plead guilty. Braig was eventually removed from the bench and from the bar.

At the time that the IRS problems surfaced, Shaid's attorney, Peter Vaira, requested that he be immunized. However, Mr. Scheff advised Vaira that this would depend on the amount of money involved in the skimming and that if the amount was within the guidelines for prosecution his client would be prosecuted. The amount was in fact within the guidelines. A plea agreement was negotiated with a plea to the two-count Information.

Prior to Shaid's sentencing Mr. Scheff prepared a sentencing memorandum detailing the cooperation which Shaid had provided in connection with the Braig investigation. In the course of the memorandum, the witness advised that the government was making no recommendation as to sentence. Scheff detailed the manner in which Shaid had cooperated in interpreting the records of the company and providing further information, including the identification and location of the actual painters and testimony before the Grand Jury. He also was involved in extensive preparation for testimony in Braig's anticipated trial. This included a number of meetings to examine documents, prepare for testimony, and anticipate cross-examination. Scheff wrote:

> The significance of this cooperation to the investigation and prosecution cannot be overstated. At the time Shaid agreed to cooperate, the government only had solved one piece of the puzzle. Shaid's full cooperation gave the government the ammunition it needed to complete the investigation successfully. In short, the combination of Shaid's records, testimony and leads to other witnesses sealed Judge Braig's fate by establishing that he was guilty beyond all doubt. Shaid deserves substantial credit for this cooperation to reward him and encourage others to follow in his footsteps.

The memorandum continued with a word about Shaid's crime. While noting the aggravating factor of the substantial amount of money involved in the crime, Scheff noted that the government, while aware of the crime, was unaware of its

magnitude and that Shaid's cooperation with the Internal Revenue agents led to the identification of additional monies which he had skimmed. Shaid writes:

> Accordingly, Shaid's cooperation prejudiced his position before this Court in assessing the seriousness of the offense and has caused him to owe more money to the government. Certainly, the Court must view this cooperation as evidence of Shaid's good faith and 100% cooperation.

During the course of his discussions with Shaid and Vaira, Scheff learned that Mr. Shaid had an extensive gambling problem. A great deal of the money which he was skimming was going to pay casino debts.

Shaid testified that prior to June 1990 he was vice president and secretary of Charles Shaid Company of New Jersey, Inc. He had held this position since 1964. In June, he signed a proxy agreement and a letter advising the other owners, and his brother Eugene, who owns 24.5% of the company, that he was asking for an unpaid leave of absence. He has not participated in any aspect of the operation of Charles Shaid and Company of New Jersey since that date. He has, however, been involved in companion companies Charles Shaid of Pennsylvania and Charles Shaid of Delaware.

Prior to 1976, Mr. Shaid's father ran the company and Elliot was involved in sales and assisted William Bowen, who was the vice president. After 1976, he became more active in sales and decision making.

In 1979-80, he began to receive contracts for work in casino hotel establishments. The first such project was at the Boardwalk Regency, now Caesars. As of 1982 or 83, the company established an office in Atlantic City run by Fred Bowen, William's brother. Fred is a foreman and general supervisor and has become more and more self-sufficient over the years except for bookkeeping operations. The Bowens began with the Shaid Company approximately 30 years ago.

Shaid testified that William Bowen is one of the most respected, knowledgeable men in the painting and wallpaper contracting business in the East. He is responsible for overseeing estimating of projects, hiring, firing, and general operation of the company. The company has engaged in somewhere between 500 and 1,000 contracts for the casino industry in the past 11 years. Most of the direct supervision of this work is by Fred Bowen and there have never been any complaints at all from anyone in the casino industry concerning the company's performance.

Elliot Shaid testified that his problems with gambling arose following the completion of the Boardwalk Regency project when he was given a trip to Las Vegas, along with his brother and their wives. They spent a long weekend in Las Vegas and were provided with credit lines for he and his brother. Prior to this time, Elliot had not engaged in any "real" gambling. While in Las Vegas he started at the blackjack table and remained there for 14 hours. He gambled for 14 to 15 hours on the second day and 3 or 4 hours on the third day. After returning home, he began frequenting casinos on a full-time basis, and as he testified he slept, ate, drank gambling. In late 1982 and 83, he hardly went to work at all and was at the casinos practically everyday prior to the opening of the doors at 10 A.M. He would come home when the casinos closed. All of this was very trying on his family, although they were unaware of what he was actually doing. Shaid became ill with high blood pressure and was hospitalized. According to the witness, he cannot explain why he kept going back, but he did and as a result he fell deeply into debt, owing hundreds of thousands of dollars, and did not know where to turn to solve his problems. He remortgaged his house, extended credit with several casinos who willingly gave him credit and was in deep financial trouble by October of 1983, by which time he had even exhausted his credit with several casinos. During this time the Bowens handled the business operation.

According to Mr. Shaid, neither his wife nor his brother were aware of his gambling problem until he took it upon himself to begin to attend to Gamblers Anonymous in October 1983. He had had a number of discussions with a personal friend, Dr. Kenneth Kool, M.D., a psychiatrist. These discussions resulted from his feelings of deep depression. Dr. Kool recommended that Shaid attend Gamblers Anonymous and in October 1983 Shaid was able to stop gambling. He has never bet since that time, will not buy a lottery ticket, will not participate in office pools, and refrains from any reference to or activity involving any form of gambling.

Despite the fact that he was making a substantial amount of money, the debts which he owed to the casinos were quite significant and Shaid found that after he stopped frequenting the establishments they began to press him for his obligations. He did not know where to obtain the money from and began skimming money from the family business by either writing checks to himself and endorsing them or writing checks to other individuals signing their names, and endorsing the checks over to himself and then cashing them. All of this was accomplished during a time when casinos kept pressing him.

During the period beginning in 1984 when Shaid was skimming money from his company he never thought about the tax consequences of what he was doing. He was only responding to the pressures from the casinos, including threats that they would cut his company off from any business. The skimming went on for approximately three years.

Mr. Shaid detailed the cooperation which he gave to both the United States Attorney's Office and the Internal Revenue Service in connection with the Braig investigation and the money skimming. He provided this information during interviews when he was not under oath. With respect to his showing the IRS checks which he had skimmed but which they had not identified, he stated that he provided this additional information because he felt that he had to do so in order to straighten out of life and get rid of his guilt feelings and anxiety over how much he had messed up his life.

Mr. Shaid has paid the $100,00 fine and has had conversations with several religious and charitable organizations concerning providing painting services for them as part of his sentence. He anticipates that his company will begin a $35 to $40,000 project for a synagogue in the next few months, which will be the first project under the sentence.

Shaid attended Gamblers Anonymous beginning in October 1983, going to sessions three to five times a week up until he became heavily involved in the Braig investigation in 1986. His wife also participated with him in the Gamblers Anonymous counselling. Since 1987, Shaid has intended GA two to three times a month, the reduction largely because of his involvement with the Braig and IRS situations. He has attempted to spend more time at home with his family, but described himself as also quite reclusive, embarrassed, ashamed, and distraught concerning the pain and suffering his conduct has caused to all involved. He also suffers from diabetes.

Shaid has continued to see Dr. Kool on an occasional basis and about eight or nine months ago he started seeing Diane Marchant, a psychotherapist who has been helping him with his problems. Since his counselling with Ms. Marchant began he describes himself as a different person than he has been in his entire life. He sees Marchant on a twice weekly basis, as well as having additional discussions with her on the telephone.

Mr. Shaid has been actively involved with the Masons since the age of 19 and has also continued active involvement in the Golden Slipper Charities, synagogue and community programs and has also been very active in Catholic Charities.

The witness commented on the potential impact on the corporate entity if he were forced to permanently discontinue involvement with the business. He believes that since William Bowen is 63 years old and will probably want to retire at some point in the near future, his removal from any involvement with the company would have a great impact. The company presently employs 50 to 60 plus people in New Jersey and 75 to 80% of its business is with the casino industry. Besides his ownership of the family owned businesses, Shaid of New Jersey, Shaid of Delaware, and Shaid of Pennsylvania, Mr. Shaid also has recently owned the Thundering Surf Water Slide at the shore, which had not been operating and was recently sold, and is also a 50% partner in Meredith Development Corporation, which is involved in residential construction in Pennsylvania, but is not presently operating. The other 50% of that company is owned by his brother.

Mr. Shaid acknowledged that he was not sure whether or not his 1984 through 86 Pennsylvania tax returns were accurate, although they probably were not.

Shaid commented upon the proxy agreement under which Mr. William Bowen currently holds his 24.5% share of the stock in Charles Shaid of New Jersey, Inc. There is no agreement nor have there been any discussions up to this point as to what will happen to his stock if he is ousted permanently. Bowen owes him no money at this time.

Dr. Kenneth Kool, M.D., a psychiatrist since 1949 with a private practice since 1955, testified that he has been a friend of Mr. Shaid's since 1966-67, having met him through mutual friends. They developed a social relationship which has gotten closer over the years and Kool knows the entire Shaid family. He described them as "very good friends."

Dr. Kool had some professional discussions with Mr. Shaid following the death of Shaid's father in 1976. Elliot, who he described as the real businessman in contrast to his brother, suffered from stress and from a certain degree of sibling rivalry. In late 1982-83, he learned of Shaid's gambling problems. Shaid expressed great dissatisfaction with his life, anxiety, and stress. They entered into informal discussions concerning these problems and Kool noted that Shaid was in a "self-

destruct mode." When Kool learned of the gambling problem and the extent thereof he advised Shaid that because of their close personal friendship it would be necessary for Shaid to enter into some kind of outside psychiatric counselling, as well as to attend Gamblers Anonymous. Through 1983 he noted mounting anxiety and depression. He diagnosed Shaid as suffering from Reactive Pathological Gambling or Impulse Control Neurosis, a diagnosis contained in the Diagnostic and Statistical Manual III. The DSM III defines the neurosis as one that requires instant gratification and is characterized by an emotionally immature individual who has been given too much or too little by his parents. These individuals have an impulse to do something injurious to themselves or others and they have a sense of heightened anticipation, and receive intense pleasure when committing the act which gratifies them. After the act they may have some relief, but often are depressed or guilty. However, there is nothing about Mr. Shaid that is specifically antisocial. His conduct however, may well be characterized as antisocial and it is often true that an individual with this problem will treat the government "almost as a parent" and will often fail to pay taxes.

The witness testified that there is nothing unusual about Shaid's having concealed his gambling. He noted that Shaid is not psychopathic or psychopathic, but that his gambling was in essence a reaction to depression. Dr. Kool believes that Shaid's financial misdeeds resulted from a desperate attempt to recoup and stabilize his life. He did not want his mother, wife or brother to know the nature and extent of his difficulties. Individuals suffering from this type of neurosis characteristically use any and all means to pay their debts. In Kool's view, therapy through GA is the cornerstone of treatment for this type of problem and is a well recognized necessity. As he understands the situation, Shaid stopped gambling on October of 1983. The doctor expressed his belief to a reasonable degree of medical certainty that Mr. Shaid has considerably matured and is coping far better with his stresses and anxieties. His gambling problem is under control and he has returned to many of his positive personality features. There is no reason why he cannot responsibly do business in a highly regulated industry. Shaid is today a much more sober, reflective, mature, integrated personality, although it is true that he continues to suffer from the neurosis and it is fair to say that a person who is a "gambling addict" is never actually cured of his disease, much the same as an alcoholic or a drug addict.

Diane Marchant, the psychotherapist currently working with Mr. Shaid, has been in private practice for three years after working at Temple Hospital for 12 years. She is a certified family and Gestalt therapist. She has been seeing Shaid

approximately two times a week for eight and a half months and has also been involved in family therapy to repair the damage caused by his gambling. She described Shaid as a pathological gambler who will require open-ended therapy and maintenance through GA.

According to the witness, Mr. Shaid is well aware that he can never go near gambling. However, this does not mean that he cannot go into a casino hotel environment for other business. He has faced up to his problem and is coping quite well with it. He has a strong understanding of what led him to his difficulties. He is struggling against self-contempt and blame and is "not there yet," but is progressing very well.

William Bowen, vice president of each of the Shade companies for the past 14 years, also serves as general superintendent of the company. He has worked for it since late 1957, starting as a painter.

Prior to June 1990, Bowen was making all decisions for Shade of New Jersey as to which projects it would undertake, the estimates to be submitted on the projects, communication with street men in the Atlantic City office, etc. He visits Atlantic City once or twice a week and speaks with his brother Fred, who is the on-site representative, three or four times a day and whenever else needed. All billing occurs from the main office in Chester, Pennsylvania, but supervision of the day-to-day activities in Atlantic City occurs out of the Atlantic City office. Fred Bowen takes care of all day-to-day matters and deals with William with respect to manpower problems and some questions concerning estimates.

From 1979 until June 1990, Elliot Shade's role with the company was mostly to work in the office and also to call on customers. The hand-ons responsibility was in William Bowen's hands. Since June of 1990 when Elliot prepared the proxy and the letter requesting a leave of absence he has had no role whatsoever with Charles Shaid of New Jersey on any of its ongoing projects in Atlantic City or in other sites in New Jersey, including the State House Restoration Project. As of the Commission's order temporarily suspending the company, it has suspended ongoing projects with several casinos.

William Bowen has daily conversations with Mini Shaid, the principal owner of the company, to advise her of general information concerning the company's activities. According to William, he can carry on the business without Elliot's

participation. He is well aware that Elliot is to have no involvement at all with the New Jersey business. However, he is not sure at this point what will happen with Elliot's stock if he is ousted from any further participation with the company.

Mr. Bowen denied any knowledge of Elliot's skimming of monies from the company. Elliot's brother, Eugene, handled most of the check-signing and paid the bills.

The witness noted considerable irregularities in Mr. Shaid's work performance between 1982 and 87. It was clear that there were some problems, but he did not know the details of them and assumed that there were family matters. Bowen is not a social friend of the Shaids. The decrease in performance did have an adverse affect on the company, however, Eugene Shaid thought that Elliot had merely "burned out."

Fred Bowen, who has worked for Shaid of New Jersey for 30 years, starting as an apprentice painter at the age of 20, testified that he makes most decisions on day-to-day work in Atlantic City. In all the years that the company has conducted business in Atlantic City, it has never had any complaints from its customers. Elliot has had a small role in connection with the Atlantic City work, mostly visiting customers or speaking with them on the telephone. At present, the company has ongoing projects with the Trump casinos for $54,000, with the Sands for $59,500, and was low bidder on a project for Bally's at $55,000, but has lost this as well as other work with the Sands because of the Discontinuance Order. Work for the company has slowed down considerably due to the Order.

Marshall J. Maltzman, Rabbi of Temple Beth Hillel-Beth El in Wynnewood, Pennsylvania, submitted a certificate on behalf of Mr. Shaid. According to the certification, Rabbi Maltzman has known Shaid as a member of the congregation for over ten years. He indicates that Shaid has always been a "credit to his family, community, and business." The rabbi indicates that he is aware of Elliot's plea of guilty to the tax violation, but believes that this was a "one-time aberration in his otherwise unblemished life." In connection with his understanding of Elliot's good character, honesty, and integrity, he writes:

> In all of his dealings and relationships with his community, Elliot has always maintained the utmost in ethical standards demonstrating by his actions not only good character, honesty and integrity, but also a sense of generosity in caring for his fellow man.

Based upon his understanding of Mr. Shaid and knowledge of his "aberration(al) conduct, and the interests of the State of New Jersey, in connection with the casino industry and the type of persons allowed to participate therein, Rabbi Maltzman indicates that he is confident his conduct will at all times meet those standards expected by the State of New Jersey and he is deserving of the privilege of licensure."

DISCUSSION AND ANALYSIS

This case presents a classic example of the way in which an addiction can destroy the life and reputation of an otherwise successful and respected person. I **FIND** that the evidence which has been produced by the respondents concerning the conduct of Elliot B. Shaid from 1982 through 87 demonstrates beyond any reasonable doubt that this man became the victim of a serious gambling addiction following his trip to Las Vegas in 1982 and that as a result of the addiction, and the mounting financial and psychological pressures which it placed upon him during 1982 and 83, he found himself in a position from which he did not know how to extricate himself and which led him on to commit criminal violations in an attempt to somehow deal with the financial pressures which were the inevitable consequence of his addiction. Elliot B. Shaid slid down the slippery slope from addiction to criminal wrongdoing. The question which this case poses is whether at this time he as an individual, and his company, can be entrusted with the imprimateur of respectability and confidence which designation as a casino service industry provides.

Initially, I **FIND** that Mr. Shaid was convicted of subscribing a false income tax return in violation of 26 U.S.C. § 7206(1), with respect to his 1984 and 1986 income tax returns. In addition, I **FIND** that although he was not prosecuted, by his own admission as well as the implications arising from the evidence, he also filed a false income tax return for 1985 and quite likely filed false income tax returns for these years with the State of Pennsylvania, although this latter has not yet been clearly established by the authorities. The total amount of money skimmed appears to have been approximately $180,000 and according to the available information the tax liability arising therefrom for the calendar years 1984 to 1986 based upon the IRS assessment of taxes and interest appears to be between $75 and $76,000, with some additional assessment of civil penalties to be the subject of negotiations between counsel for Shaid and the IRS. The tax liability to the State of Pennsylvania is presently undetermined.

The crimes for which Mr. Shaid was convicted clearly constitute crimes of moral turpitude. They involve an attempt, albeit perhaps one of which Shaid did not specifically think, to defraud the federal government out of monies to which it was properly entitled by misrepresentation and deceit concerning the actual amount of income received by Shaid from his corporation during the years in question. Such conduct, in addition to being a violation of the federal statute, certainly would constitute a violation of N.J.S.A. 2C:21-4(a), if conducted in New Jersey. That statute provides:

> . . . , a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing.

Filing a falsely subscribed income tax return has the purpose of injuring and deceiving the United States government. Pursuant to N.J.S.A. 5:12-86c(1), a violation of N.J.S.A. 2C:21-4(a) is an enumerated disqualifying offense for purposes of determining eligibility for licensure. Pursuant to N.J.S.A. 5:12-92b, licensure may be denied to any non-gaming service industry required to be licensed pursuant to subsection 92c, where any applicant would be disqualified in accordance with the criteria contained in section 86 of the Act. Since pursuant to section 86c(1), Mr. Shaid would be disqualified and since pursuant to N.J.A.C. 19:43-1.3c each applicant required to be licensed pursuant to subsection 92c and d must produce evidence of assurances to establish by clear and convincing evidence its good character, honesty, and integrity, the corporate entity is subject to disqualification as well if Mr. Shaid is a participant therein.

Given the above, the remaining inquiry is related to whether or not, despite Mr. Shaid's disqualification and its negative impact upon the ability of the corporate entity to fulfill the requirements of N.J.A.C. 19:43-1.3, the individual qualifier, or alternatively, the corporation in and of itself without Mr. Shaid, can satisfy the conditions for licensure. For Shaid himself to qualify, he must prove rehabilitation pursuant to the standards contained at N.J.S.A. 5:12-90h and 91c, in accordance with the Commission's decision in the Bershad matter, 12 N.J.R. 48 (1989).

In considering the rehabilitation standards, the initial inquiry is with respect to the nature of Mr. Shaid's duties with the corporation. Clearly, although the main day-to-day operation of Shaid of New Jersey, particularly with respect to the Atlantic City operation, is under the control of Fred Bowen and the close supervision of

William Bowen, there is no question but that, at least in those periods when he was not so adversely affected by his gambling activities, and until June 1990, Elliot Shaid was an active participant in Shaid of New Jersey's operations, represented the company with respect to visiting clients and having contact with them, and was of course a 24.5% owner of the company. Thus, he is a principal, as well as a representative to the regulated public, and his position is of significance.

Secondly, with respect to the nature and seriousness of the conduct and offense, there is no question but that attempting to defraud the United States of its appropriate tax revenues is a serious matter. Although Mr. Shaid was not sentenced to jail as a result of his offense, it is quite possible that he was treated more leniently as a result of the strong sentencing memorandum prepared by the Assistant United States Attorney in recognition of his cooperation in the Braig matter, as well as in uncovering the full extent of the tax liabilities. The seriousness of the offense cannot be denied, and the amount of money involved is quite significant.

The circumstances under which the offense or conduct occurred are of course of great importance. Mr. Shaid has established beyond any question that at the time that he committed the offense he was under substantial financial pressure resulting from his ongoing gambling addiction and the significant debts which he had run up as a result thereof. While he had stopped gambling prior to the time that he began skimming money from the corporation, there is no question but that the skimming resulted from the effects of the gambling addiction and was not a separate and unrelated series of events. The income tax violation occurred as a consequence of Shaid's financial manipulations. I fully believe his testimony that at the time he skimmed the money he did not consider the tax consequences of such conduct. Nevertheless, he did subscribe a false Income Tax report for 1984 and 1986.

Given the evidence concerning Shaid's general history, I am inclined to agree with Rabbi Maltzman's characterization of Shaid's conduct as aberrational, that is in the sense that neither prior to 1984, nor after 1987, is there any indication that Mr. Shaid was involved in any criminal conduct. That the underlying emotional problems which resulted in his gambling addiction may have existed long before he began to gamble does not detract from my conception that but for the gambling addiction, Shaid would not have gotten into the financial difficulties which led him to skim money and as a consequence violate the tax laws.

At the time that Mr. Shaid committed his offenses he was a chronologically mature individual. One may question whether he had the same emotional stability and maturity that his chronological age would denote, but there is no question that on the surface his conduct cannot be chalked up to gross immaturity. The offenses occurred between 1984 and 1987, a relatively recent period of time.

Lastly, consideration must be given to the question of rehabilitation in terms of what Mr. Shaid has done to try to overcome his difficulties. The evidence reveals that once Mr. Shaid recognized the seriousness of his plight, that is, once he was under such pressure and so distraught and upset about his gambling that he was forced to face it, he consulted with Dr. Kool, followed the doctor's advice to become involved with Gamblers Anonymous, drew his wife into that therapy milieu with him, stopped gambling entirely, and over the course of the next several years followed through with therapy with Dr. Kool and eventually with Ms. Marchant. While Shaid did commit his criminal offenses after he stopped gambling, given the pressures which he was under and the problems from which he was suffering, it is not entirely surprising that his problems did not immediately cease because he stopped gambling. However, at this time, it appears that Shaid has significantly and convincingly subdued his urge to gamble, learned to cope with it and even to overcome it and has undertaken steps to handle his financial obligations on a legal basis.

Given all of the above, as well as the clear evidence that Shaid was otherwise a responsible businessman and a well thought of and civicly minded individual, I **CONCLUDE** that Mr. Elliot Shaid has established by clear and convincing evidence to the best of his ability that he is today a considerably different person than he was when he was in the throes of his gambling addiction in 1982-83 and that he is far less likely to succumb to the urge to gamble and thus far less likely to fall into the financial woes which led him to illicitly take money from his corporation and as a consequence thereof commit tax violations.

The great difficulty in determining the ultimate question of whether or not Shaid is rehabilitated obviously arises from the fact that just as with an alcoholic or a drug addict, one who is a gambling addict is in some sense never entirely cured. There is always some risk that Mr. Shaid may again begin to gamble and if he does there is little reason to doubt that he will plunge headlong into that quagmire. If this occurs there is always the possibility that he will become financially embroiled and resort to "any and all means" to cure his financial difficulties, as Dr. Kool

indicated. Nevertheless, I cannot **FIND** that the likelihood of such reoccurrence is significant enough to overcome the conclusion that Elliot B. Shaid has faced up to his problem, has dealt with it, has learned methods of coping and indeed resisting, and has found the strength within himself, as well as the sources of support necessary to prevent such reoccurrences. Under these circumstances, and given the fact that Mr. Shaid is not applying for a position which would take him directly in contact with the gaming function, but merely one which may involve some telephone or even personal contact with casino hotel representatives in connection with painting and wallpaper contracting, I see this as a situation where Mr. Shaid has established his rehabilitation by clear and convincing evidence and thus is qualified. While he still has to provide painting services as part of his sentence and while he will be on probation for some period of time, I do not **FIND** the proofs such as to warrant his disqualification.

With respect to the corporate entity, clearly if Mr. Shaid is rehabilitated than Charles Shaid of New Jersey, Inc., is qualified for licensure, even with his participation. It has been a respected and successful contractor within the casino hotel industry since the onset of casino gambling in Atlantic City, performing numerous contracts for substantial amounts of money without any indication of complaint whatsoever. No basis exists for denying it the required approval. Alternatively, if Elliot B. Shaid is found to be unqualified there is every reason to believe that the Bowens are capable of operating the business with the overall supervision, although not the active participation of Minnie Shaid and the financial and business participation of Eugene Shaid, even if Elliot B. Shaid is not involved with the New Jersey company. Obviously, there may come a time when both of the Bowens may retire, but that is not the situation at present and it would be inappropriate to disqualify the company merely on the possibility that the Bowens will ultimately leave and the company may then be unable to operate properly without the participation of Elliot Shaid.

Under all the circumstances, I **CONCLUDE** that the corporate entity can be licensed as a casino service industry with or without the participation of Elliot B. Shaid. Further, I **FIND** that Mr. Shaid, although otherwise disqualified from licensure because of his criminal activities, has nevertheless established by clear and convincing evidence that he has rehabilitated himself from the disqualification and therefore he can qualify for participation with his corporation. Therefore, the Division's complaint is dismissed and it is **ORDERED** that the casino service industry

license of Charles Shaid of New Jersey, Inc. and the qualification of Elliot B. Shaid shall be **GRANTED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

8/30/90
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

9/4/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 7 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

1199

EVIDENCE LIST

On behalf of State of New Jersey:

P-1 Judgment of Conviction

On behalf of respondents:

R-1 Information

R-2 Sentencing Memorandum

R-3 Letter of August 10, 1989

R-4 Order of August 14, 1989 reducing sentence

R-5 Compilation of Contracts

R-6 Letter of June 26, 1990 from Elliot to Minnie Shaid

R-7 Letter of June 26, 1990 from Minnie Shaid to Elliot B. Shaid

R-8 Proxy Agreement

R-9 Certification of Rabbi Maltzman

R-10 Letter of August 26, 1990 from Owen A. Knopping, Esq.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-293
LICENSE NO. 041274-21
OAL DOCKET NO. CCC 02853-90
ORDER NO. 90-39-7

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF DIANE R. SHANKS

ORDER

A hearing 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 October 3, 1990,

IT IS on this 16th day of October 1990, ORDERED that the initial decision is modified as follows:

> The ALJ statement that the "Casino Control Act establishes a financial stability criteria hierarchy depending upon the entity being licensed or the position of the applicant within the gaming industry" (init. dec. at 6, 7) is rejected as inconsistent with the Commission's decision in In re the Applications of Scott Onque for a Casino Key Employee License and Renewal of Casino Employee License, ____ N.J.A.R. ____. There, the Commission rejected the contention that the standard for measuring financial stability, integrity and responsibility differed for casino employee licensees and casino key employee licensees. Rather, the Commission interpreted the Act to require the application of the same standard to all licensees who are subject to the financial qualification criteria contained in N.J.S.A. 5:12-89(b)(1).

ORDER NO. 90-39-7

IT IS FURTHER ORDERED that the renewal application of Diane R. Shanks is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC - 02853-90

AGENCY DKT. NO. 90-EA-293

DIANE R. SHANKS,

Petitioner,

vs.

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

Respondent.

ELLIOT C. BEINFEST, ESQUIRE, attorney for petitioner, Diane R. Shanks

JOANNE C. CIANCIMINO, Deputy Attorney General for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: AUGUST 10, 1990 Decided: AUGUST 14, 1990

OAL DKT. NO. CCC-02853-89

BEFORE **JOSEPH E. KANE, ALJ:**

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) objecting to the renewal of petitioner's casino employee license #41274-21. The Division alleges that petitioner does not possess the requisite financial stability and integrity required by N.J.S.A. 5:12-89(b)1. and lacks the requisite good character, honesty and integrity required by N.J.S.A. 5:12-89(b)2.

PROCEDURAL HISTORY

The Division filed its letter of objection with the Commission on March 6, 1990. Respondent requested a hearing on March 26, 1990 and on April 9, 1990 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on June 6, 1990 by Joseph E. Kane, ALJ followed by a hearing which was held on July 27, 1990.

ISSUES

The issues to be determined by this tribunal are as

follows:

A. Whether petitioner can establish her financial stability, integrity and responsibility as required for licensure pursuant to N.J.S.A. 5:12-89(b)1.

B. Whether the petitioner possesses the requisite good character honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89(b)2.

FINDINGS OF FACT

Based upon documents and testimony proffered during the course of the hearing, the below represents the **FINDINGS OF FACT** in this matter.

Diane R. Shanks is a singlewoman who was originally licensed to work in the casino industry in 1982. She has been a resident of Atlantic City for 26 years where she resides currently with her mother and various family members.

Since her initial licensing by the Commission, Ms. Shanks has not been guilty of any conduct resulting in negative information on her Personal History Disclosure Form with the exception of an outstanding loan to the New Jersey State Higher Education Assistance Authority (hereafter referred to as NJHEAA). This delinquent student loan now forms the basis of the objection to the renewal of her casino employee license on the grounds that she does not possess the requisite financial stability and integrity and corresponding good character, honesty and integrity required under the Act.

Ms. Shanks obtained the student loan in the amount of

$2,635.00 to enable her to attend Associated Business Careers in Atlantic City, New Jersey. She began her studies in 1984 and eventually received a certificate in data processing. The absenteeism of the teaching staff at Associated Business Careers was high according to Ms. Shanks, leaving her and her fellow students on many days to teach themselves. The school was also to provide post graduation placement, a promise which was also breached. Feeling angered and cheated by the entire experience, Ms. Shanks did not feel obligated to repay the student loan. She has recently come to the realization that NJHEAA had no involvement with the quality of the staff or curriculum at Associated Business Careers and thus, the loan must be repaid.

Ms. Shanks' student loan payments have been infrequent and sporadic at best. Her first payment in the amount of $50.00 was due on August 15, 1984. Instead, the first payment was received by NJHEAA in March of 1986. Two additional payments were made in 1986 with only one payment in 1987. Seven payments were made in 1988 with one constituting an involuntary payment as a result of an attachment of her federal income tax refund. No payments were received in 1989. After obtaining employment on March 11, 1990 at the Claridge Hotel Casino as a baccarat dealer, she began making regular monthly payments commencing on March 15, 1990. As of July 19, 1990 Ms. Shanks owes $2,436.76 to NJHEAA.

Ms. Shanks' casino industry career began with employment at Caesars in May of 1983 which continued until December 1983. Thereafter, she was employed at Tropicana from May 1985 to October 1986, Showboat from May of 1987 to June of 1989. She is

currently employed at the Claridge Hotel Casino since March of 1990.

In addition to supporting herself, she has, when employed given her mother $300 per month including a portion of the utilities. This money supports not only her mother, but also various family members living in the household. At one point, her sister returned home with her four children and then disappeared. This left Ms. Shanks to support not only her mother and her grandmother but also her nieces and nephews. According to Bradley Charles Bryant, a personal friend of Ms. Shanks, she has always been a person who supported her family and often was the only support upon which they could rely. Mr. Bryant, who has been a casino floor supervisor for the last nine and one half years at Sands testified that he has always found Ms. Shanks to be an honest and caring individual. When his mother was seriously ill, Ms. Shanks would bathe his mother, fix her hair

and generally be there to assist in any way possible. During the seven and one half years Mr. Bryant has known Ms. Shanks, he has found her to be a very caring individual and very supportive of those who are in need. He was aware of Ms. Shanks delinquency on her student loan and confirmed that she was frustrated with the payment of the loan due to to the inferior education she received coupled with her frustration that the school had not assisted her with job placement as promised. He recalls driving her to the State office of NJHEAA in an attempt to resolve the matter, however, he was unable to testify from his personal knowledge as

to whether any agreement had been reached.

Ms. Shanks submitted in support of her good character, honesty and integrity letters from her Showboat and Claridge supervisors. Both these supervisors attest to Ms. Shanks competency, honesty and pleasant manner when dealing with fellow employees and customers. Her supervisor at the Showboat, Edna Willis, is very impressed with the work performed by her and would trust her in all situtations.

DISCUSSION AND CONCLUSION

The question to be addressed herein is a novel one. It is whether Ms. Shanks' conduct in providing delinquent and/or sporadic payments to satisfy her student loan guaranteed by NJHEAA demonstrates her lack of financial integrity and stability pursuant to Section 89(b)1 of the Act. It must be emphasized, that the Division admits that the within action would not have been instituted if the debt in question was a "private" debt such as a delinquency or chargeoff on a credit card or car loan. The nature of the debt and its guarantor was the factor which precipitated the Division's letter objection of March 6, 1989. The within matter should not have come as a surprise to Ms. Shanks considering that the Division noted in its letter to her of February 25, 1987 that it was concerned with the student loan delinquency and that failure to pay the loan could draw into question her financial integrity and stability.

The Casino Control Act establishes a financial stability

criteria hierarchy depending upon the entity being licensed or the position of the applicant within the gaming industry. The standard as it applies to corporate applicants for a casino license including the casino's qualifiers, has been identified by the Casino Control Commission as the most stringent. In addition to basic financial solvency and soundness, the standard relates to honesty and forthrightness in business dealings. Further, it includes the air and prudence exercised by the entity or individual, i.e., managing, preserving and enhancing the assets entrusted to such entity or individual. In re: Resorts Casino Application, 10 N.J.A.R. 244, 250 (1979). The legislature obviously did not intend to impose the more strict corporate standard on all workers within the casino industry. Casino key employees are not afforded the benefits of rehabilitation to obviate the disqualifying results of an 86(c)1 violation as are casino license employees and hotel registrants pursuant to Sections 90(h) and 91(d) of the Act respectively. Nor do hotel registrants need to demonstrate good character, honesty and integrity pursuant to Section 89(b)2 of the Act as do casino license employees. The hotel registrant need not be concerned with financial integrity except as it may affect an 86(c)1 violation. The regulatory scheme thus runs the gamut from total indifference to an individual's financial stability and integrity to complete scrutiny of every phase of an entity's financial accountability. Obviously this leaves a large middle ground against which Ms. Shanks' conduct must be examined in order to determine her financial integrity and stability or lack thereof.

Just as the eight factors set forth in Section 91(d) and 90(h) of the Act must be considered in whole in order to reach a determination of rehabilitation, so too all mitigating and aggravating factors must be analyzed in answering the question does Ms. Shanks possess the Act's 89(b)1 requirement of financial integrity and stability.

1. Financial support of family.

Ms. Shanks has demonstrated that she can support not only herself, but also participates in the support of her mother, grandmother, and at times her nieces and nephews. The Division did not present any other adverse credit information other than the student loan. Ms. Shanks testified that in 1988 she purchased a 1988 hyundai automobile and with the exception of two five day late periods, has been current on all payments to the date of the hearing.

2. Employment stability.

Since receiving her license in 1983 there have been periods when Ms. Shanks did not work within the casino industry. While there, however, as demonstrated by R-2 and R-3, she apparently enjoyed a good relationship with her employer and was considered a valued employee. In 1984 she attempted to better her life by obtaining a new employment skill, that of data processing.

3. Status of the student loan.

Ms. Shanks' payments on her student loan are delinquent or sporadic at best. To her credit, however, is the fact that during the hearing she admitted she was wrong in venting her

aggression on NJHEAA rather than Associated Business Careers and now realizes that payment of the loan is something that "has to be done". Since obtaining employment at Claridge, in March of 1990 her payments have been current.

When examining Ms. Shanks' financial responsibility as a whole, it is clear that with the exception of her student loan, she is a person of good financial stability and integrity. She supports herself and her family, pays a car loan and does not have bad credit with the exception of the student loan. From the testimony presented, as well as observing the demeanor of Ms. Shanks, I **FIND** that she is an individual who can be trusted and believed when she indicates that she intends to continue paying her student loan. Thus, considering the above as a whole, I **FIND** the mitigating factors outweigh her past student loan payment history and accordingly, I **FIND** that she does possess the requisite financial stability and integrity required of a casino employee license holder under Section 89(b)1 of the Act.

DOES MS. SHANKS POSSESS THE REQUISITE GOOD CHARACTER HONESTY AND INTEGRITY REQUIRED OF A CASINO EMPLOYEE LICENSEE PURSUANT TO SECTION 89(b)2 OF THE ACT.

Whenever the Division raises as an issue the good character, honesty and integrity of the petitioner, it is then the petitioner's burden to show by clear and convincing evidence that she possesses the requisite good character, honesty and integrity required for licensure under the Act. In accordance with the strict regulatory provisions intended by the legislature, it is imperative that the character and backgound of

the licensee be closely scrutinized and evaluated as to fitness for licensure. Clear and convincing falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here, the trier of fact should have a firm belief that the facts presented by the petitioner are true. The standard requires more than a mere balancing of probabilities but less than absolute certainty. A reasonable certainty is required. Lapre vs. Caputo, 131 N.J. Super. 118 (Law Div. 1974).

Petitioner produced one witness and two letters from her employer which uniformly attests to her competency on the job, honesty, caring nature and integrity. The State did not present any evidence either directly or by way of cross-examination to disparage Ms. Shanks' reputation with the exception of her student loan delinquency.

It must be noted that the Division admitted during the course of the hearing that an NJHEAA loan had no greater legal priority or status at law than that of a private debt. That is, assuming Ms. Shanks declared bankruptcy, her student loan would assume the same priority of that of a general creditor together with her credit cards and other non-secured loan obligations. Additionally, the Division admitted that if the payment circumstances were identical as to a private debt, the instant matter would not have been instituted.

Thus, considering that the student loan stands in equal parity with "private debts", Ms. Shanks' delinquency on this particular obligation should not be afforded any additional

weight. Accordingly, when balancing the delinquency as an aggravating factor against the mitigating factors of her good character, honesty and integrity it is clear that the former category does not greatly outweigh the latter so as to lead to the conclusion that she does not possess the requisite good character, honesty and integrity required of a licensee. The facts and circumstances of this matter demonstrate that Ms. Shanks should be permitted to retain her casino license #41274-21.

It must be noted, that this decision does not sanction or otherwise condone delinquent student loan payments. Under the facts of this particular matter, Ms. Shanks was able to demonstrate that she is now committed to repaying the loan and together with the good character evidence submitted by her, I **FIND** that she should be permitted to retain her license. A student loan has no greater priority at law than that of a private debt, however, the nonpayment of such a loan or excessive late payments under the facts of a particular matter may seriously draw into question a licensee's good character, honesty and integrity.

IT IS HEREBY ORDERED that Diane R. Shanks shall be permitted to retain her casino employee license #41274-21.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 15, 1990
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

8/20/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 22 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

JOINT

J-1 Updated Credit Profile dated March 3, 1989

FOR PETITIONER:

P-1 Copy of cancelled checks dated March 15, 1990, April 26, 1990, May 6, 1990 and June 10, 1990;

P-2 Certification of Edna Willis dated August 2, 1990;

P-3 Letter from Steven Miller dated July 31, 1990;

FOR RESPONDENT:

R-1 Computer printout of Status-Monthly Repayment ledger of NJHEAA;

R-2 Letter dated February 25, 1987 from John I. Bowman of the Casino Control Commission;

WITNESSES

FOR PETITIONER:

Diane R. Shanks

Bradley Charles Bryant

FOR RESPONDENT

Agent John David Maggs, Division of Gaming Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-289
APPLICATION NO. 45314-21
REGISTRATION NO. 42757-40
OAL DOCKET NO. CCC 650-89
ORDER NO. 90-33-4

RENEWAL APPLICATION OF RICHARD T. SILBERT

ORDER

A hearing 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 technical exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of August 15, 1990,

IT IS on this 20th day of September 1990, ORDERED that the initial decision is modified as follows:

> The Administrative Law Judge implied that the decision in Dunston v. Department of Law and Public Safety, 240 N.J. Super. 53 (App. Div. 1990) requires the Commission to consider the rehabilitation factors listed in sections 90(h) whenever good character, honesty and integrity pursuant to 89(b)(2) and 90(b), are an issue. We do not agree. First, an applicant's good character may well be placed in issue where no criminal conduct is involved. Moreover, Dunston involved issues relating both to a disqualifying offense and to good character. In analyzing those issues the court held that, "where the conduct under §86 and the contrary demonstration under §90(b) are all part of the same transaction and constitute a single res gestae, it would, in our view, contravene the statutory intendment to

insist that while the §86 conduct can be overcome by rehabilitation, the circumstances surrounding the conduct cannot be. Id. at 61-62.

In this case good character is the only issue. While the Commission believes that an analysis of the rehabilitation factors listed in section 90(h) of the Act may in many instances be helpful in determining whether an applicant has established the good character, honesty and integrity required for licensure by N.J.S.A. 5:12-89(b)(2) and -90(b), whether or not this approach is desirable can only be determined upon consideration of the nature of the good character objection.

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 650-89
AGENCY DKT. NO. 89-EA-289

RENEWAL APPLICATION OF RICHARD T. SILBERT FOR A CASINO EMPLOYEE LICENSE

Scott Silver, Esq., for applicant (Dilworth, Paxson, Kalish & Kauffman, attorneys)

James Armstrong, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: July 25, 1989 Decided: July 6, 1990

BEFORE **RICHARD J. MURPHY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Richard T. Silbert applies for renewal of his casino employee license under 5:12-86, 89b(2), 90b, to continue working as a box person in the industry. The Division of Gaming Enforcement (Division) objects on the basis of negative information revealed as to Mr. Silbert's financial stability, integrity, and responsibility and because of his criminal record incurred since he was licensed in June of 1983, which includes charges of consumption of alcohol beverage by a minor, criminal attempt/burglary, criminal trespass and possession of a weapon. The Division objects primarily because of the licensee's criminal record. The Casino Control Commission (Commission) filed Mr. Silbert's renewal application with the Office of Administrative Law on January 30, 1989 for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq., and a prehearing was held on April 6, 1989, with a plenary hearing held on July 17, 1989. The record remained open until July 25, 1989, for receipt of additional documentation. The due date for submission

for this decision was extended on several occasions for good cause not related to this case and finally extended until July 1, 1990. I regret any hardship or inconvenience that this unavoidable delay may have caused the parties.

ISSUE

The question presented is whether the applicant can demonstrate by clear and convincing evidence that he possesses the requisite good character, honesty and integrity required by N.J.S.A. 5:12-89b(2) and 90b, taking into consideration the factors of rehabilitation established by N.J.S.A. 5:12-90h.

The basic underlying facts set forth in the Division's objection are accurate, although they were supplemented at the hearing, and they are set forth in full and adopted below:

> Division investigation revealed that Mr. Silbert had a charge off account with First Fidelity Bank South for $2,232.13. The licensee had an automobile loan with First Fidelity Bank-South. Mr. Silbert failed to continue making payments on this loan and on April 15, 1986 his automobile was repossessed. The licensee failed to disclose this charge off account on his renewal application but admitted to it at his personal interview. Mr. Silbert advised that he was unemployed and in the hospital when his automobile was repossessed. A wage execution has since been placed on the licensee's salary and he is currently paying approximately $85 a week to satisfy this debt.
>
> Division investigation also revealed that the applicant had a charge off account with Shore Acceptance Company for $200. Mr. Silbert failed to disclose this debt on his renewal application but acknowledged it at his personal interview. The licensee advised that he had never had an account with Shore Acceptance Company. Mr. Silbert claimed that he has since contacted Shore Acceptance Company and resolved this matter.

B. Good Character, Honesty and Integrity:

( ) No Negative Information (X) Negative Information As Follows:

See Section "C"

C. Criminal Record:

(X) Criminal Record ( ) No Negative Information

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(X) Negative Information as Follows:

Since his initial licensure, Mr. Silbert has been arrested three times.

On October 24, 1983, Mr. Silbert was arrested by the New Jersey State Police and charged with Consumption of Alcoholic Beverage by a Minor, contrary to N.J.S.A. 2C:33-15. The police report indicated that Mr. Silbert and others were observed by the New Jersey State Police purchasing and consuming alcoholic beverages at the Broadway by the Sea Theatre Lounge in Harrah's Marina Hotel and Casino. On December 19, 1983, Mr. Silbert was found guilty of the offense. He was sentenced to pay a fine of $25, $25 court costs and $25 to the Violent Crimes Compensation Board. The licensee failed to disclose this arrest on his renewal application but admitted to it at his personal interview. Mr. Silbert advised that he thought he was able to legally drink alcoholic beverages because he was excused under the grandfather clause in the statute under which he was charged. The licensee further explained that he failed to disclose this arrest because he thought it was dismissed, since he was only required to pay a $75 fine.

On January 5, 1984, the licensee was arrested by the Atlantic City Police Department and charged with Criminal Attempt/Burglary, contrary to N.J.S.A. 2C:5-1. The police report indicated that Mr. Silbert was observed attempting to gain entrance into a truck in a parking lot on Pacific Avenue in Atlantic City, New Jersey. On February 29, 1984, the licensee was found guilty of the offense. He was sentenced to pay a fine of $50, court costs of $25 and $25 to the Violent Crimes Compensation Board. Mr. Silbert disclosed this arrest on his renewal application. The licensee advised that he and some friends were walking across the parking lot in question and were behaving boisterously. Mr. Silbert denied that he attempted to break into a truck.

On February 5, 1987, Mr. Silbert was indicted in Atlantic County Indictment No. 87-02-0192-C for: Criminal Trespass, contrary to N.J.S.A. 2C:18-3(a); Possession of a Handgun Without a Permit, contrary to N.J.S.A. 2C:39-5(b); and Possession of a Weapon, contrary to N.J.S.A. 2C:39-5(d). The police report indicated that on November 11, 1986 Mr. Silbert and his roommate forced their way into the apartment of the roommate's girlfriend. While in the apartment they shouted obscenities and physically assaulted one of the females. During the incident, Mr. Silbert was in the possession of a handgun and a large knife. On May 4, 1987, the licensee entered a retraxit plea of guilty to count two on the indictment, Possession of a Handgun Without a Permit. Mr. Silbert was sentenced to: twelve days in prison; one year probation; a $200 fine; and had to pay $30 to the Violent Crimes Compensation Board. The remaining charges were dismissed. This arrest and indictment occurred after Mr. Silbert filed his renewal application. The licensee acknowledged the incident at his personal interview. The licensee's explanation

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> of this incident is inconsistent with the Atlantic City Police Department's investigation report and court records. Mr. Silbert explained that he and his roommate went to his roommate's girlfriend's apartment to get money that she owed his roommate. An argument ensued and his roommate's girlfriend called the police. Mr. Silbert advised that he and his roommate left before the police arrived. They were later stopped by the police regarding the incident. At this time, Mr. Silbert claims the police found a gun registered to his roommate in Mr. Silbert's automobile. The licensee claimed that he was arrested but that all charges were dropped in court. The licensee further advised that he was ground guilty of a downgraded charge, Possession of a Handgun Without a Permit and only fined $250.
>
> The Division will object to Mr. Silbert's licensure renewal pursuant to Section 89(b)(2) of the Casino Control Act, as incorporated by Section 90(b), as it appears from the foregoing that the licensee has failed to establish his good character, honesty and integrity. (Division's objection at 1 to 3). (emphasis added).

Mr. Silbert's current employment is with the Trump Plaza Hotel and Casino as a craps dealer, and the Division investigation found that his business ability and casino experience were satisfactory and not grounds for objection to his continued licensure. At the hearing, Mr. Silbert did not contest the fact that he has been convicted of three crimes since 1983, including Consumption of Alcoholic Beverages by a Minor, Criminal Attempt/Burglary, and Possession of a Handgun Without a Permit. He further admits that he was charged with criminal trespass and possession of a weapon in connection with the most recent criminal conduct, which occurred on November 11, 1986.

He offered the following explanations. As to the underage drinking charge, he stated that on October 24, 1983, when he was 19 years of age, he was at Harrah's Marina watching football while wearing a casino badge and was served a drink in a bar. He denies having had a drink in the casino, and claims that he was confused as to the drinking age, which had been changed several times, and states that he "assumed" he could drink, but pled guilty to the charge.

As to the second offense, criminal attempt/burglary, which also occurred when Mr. Silbert was only 19 years of age, he states that he was out with a number of friends, the same companions with whom he engaged in underage drinking) and was, with these friends, engaged in drinking and throwing eggs at "hookers" in Atlantic City. Although he was drunk at the time, he is "100% sure" that he did not

try to break into a truck on that occasion, but he admits that he was "mouthy" to arresting officers and that this may have aggravated the incident.

With respect to the last, (and most serious) of the incidents, occurring on November 11, 1986, involving charges of criminal trespass, possession of a handgun without a permit, and possession of a weapon, the applicant admits that he pled guilty to possession of a handgun without a permit, but characterizes this incident as a matter of "poor judgment". He explains that abuse of alcohol, for whlch he has now been treated, played a role in this, and the other criminal activities. Mr. Silbert's testimony did not differ substantially from the above statement given to the Division and he emphasizes that he didn't enter the house of Pepe's girlfriend and also didn't know that Pepe had a gun. He claims that "Pepe" told him, as he stood outside the house, that "Rick, get rid of the gun!" and Silbert admits that he panicked and ran and threw the gun and a knife down a nearby alley. Pepe then ran out and drove off, leaving Silbert to face the police. The applicant offered the following voluntary statement from the victim of this crime, one Karen Berenato:

> . . . Q. Did Pepe have a gun in his possession?
>
> A. I never saw one, he never threatened me verbally as if he had one.
>
> Q. Were you in fear in any way that he might have had a weapon of any kind?
>
> A. No, I wasn't in fear of him having a weapon.
>
> Q. What happened after Pepe struck you?
>
> A. <u>During this time, Debbie was on the phone calling the police. Richard Silbert was standing just outside her apartment door and Pepe told him "Ricky, get rid of the gun she's on the phone with the police."</u>
>
> Q. <u>At that point were you in fear that Ricky had a weapon and might hurt you with it?</u>
>
> A. <u>I wasn't in fear at all about any weapon</u>. <u>Again, I never saw one and was never threatened by one, implied or real</u> . . . . (P 12).

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Mr. Silbert emphasizes that he is not a violent person, had no prior knowledge of the existence of Pepe's weapon, and did not threaten or hurt anyone. He states that his crime was using poor judgment in a very stressful situation.

Because of his problems with alcohol and occasional use of controlled dangerous substances, he participated in a 45-day in-patient substance abuse program and then went regularly to Alcoholic Anonymous (AA). He feels that he has brought his alcohol problems under control, and now goes to AA when he feels he needs it, and is not receiving any other follow-up therapy or counseling. He states that he no longer drinks, and is now engaged to be married and intends to start a family. After leaving the alcohol rehab program, he performed volunteer work (not required as part of the terms of his probation) at the Atlantic City Rescue Mission, as well as the Marine Mammal Stranding Center in Brigantine, New Jersey. His conduct while under supervision of the Atlantic County Probation Department was satisfactory, with all fines paid, and probation has been terminated.

The Division raised several matters as to the applicant's driving record during the hearing, but these were not part of the Division's objection and involved some rebellious "hot-rodding" in which Mr. Silbert had earlier engaged in and are not relevant to this renewal application.

Mr. Silbert states that he has worked as a craps dealer since leaving high school and he knows no other trade or profession. He submits a letter from the craps supervisor at the Trump Plaza Hotel/Casino, Michael S. Faccenda, attesting to his maturity and character (P-2). Craps floorperson, William Shillingford, of Trump Plaza also characterizes him as a "outstanding crap dealer" who needs "little or no supervision regarding procedures and/or game protection". Mr. Shillingford also considers the applicant to be responsible and an asset to Trump Plaza (P-3). Michael Scardino, another floorperson at Trump Plaza who has supervised Mr. Silbert, states that:

> Rick has tried to better himself at work and has dealt the game of craps with integrity and excellence. I know Rick has made some mistakes, but he realizes the importance of his casino license and that it depends on his livelihood and future in the casino business. (P-4).

He offers other letters of reference, including one from his mother, and submits the following closing statement, by way of letter received July 25, 1989:

> . . . Please let me again stress that I had no prior knowledge of the existence of a weapon and I never threatened to hurt anyone. I am not a violent person. The victim states this in her statement. . . . I am not a criminal, my crime was that I used very poor judgment in a stressful situation.
>
> This has taught me a very valuable lesson and I know that I will never be in a situation [sic] to this one again. I am truly sorry for any problems that I contributed to for Karen [the victim] or anyone else. Also for the time I took up with officials in courts to correct this situation. I have truly learned my lesson-never, ever, again will I do anything to jeopardize my future, or cause anyone any grief. Dealing is the only occupation I know--I have dealt since I was 19 years old and I am not trained for any other type of employment--please give me this one time chance. (P-11).

There is no dispute as to the above facts and I so **FIND**.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

All applicants for casino employee licenses must, prior to the issuance of any such license, produce such information, documentation, and assurances to meet the qualification criteria, including New Jersey residency, contained in Subsection b, of Section 89 of the Casino Control Act. See N.J.S.A. 5:12-90b.

An applicant seeking renewal of his or her casino employee license has the burden of establishing by clear and convincing evidence good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2) and 90b:

> [e]ach applicant for a casino . . . employee license shall provide such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the ten year period immediately preceding the filing of the application .... N.J.S.A. 5:12-89b(2).

Under 89b(2), the applicant must establish good character, honesty and integrity as a matter of fact and not merely as a matter of reputation, see

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Application of Boardwalk Regency Corp. for a Casino License, 90 N.J. 361, 369 (1982), appeal dismissed 459 U.S. 1081 (1983), and licenses have been denied where there is evidence that applicants have engaged in such nefarious activities as procuring prostitutes for foreign officials engaged in casino regulation, or swindling casino patrons, by altering dice. See, e.g., Alter v. Division of Gaming Enforcement, 6 N.J.A.R. 584 (1979); Division of Gaming Enforcement v. Matta, 5 N.J.A.R. 439 (1983). The Superior Court of New Jersey, Appellate Division, recently held in the matter of Dunston v. Division of Gaming Enforcement, decided April 10, 1990, A-197-89T3, that the factors of rehabilitation set forth in N.J.S.A. 5:12-90(h), must also be considered by the Commission in assessing good character, honesty and integrity, where disqualifying conduct under Section 86 and conduct under Section 90b are all part of the same transaction and constitute a single "res gestae." (Dunston at 10). In determining whether an applicant has affirmatively demonstrated rehabilitation from disqualifying offenses, either specifically enumerated under Section 86 or otherwise inimical to licensure, the Commission must thus consider the following factors of rehabilitation as set forth in N.J.S.A. 5:12-90h. [discussion of each factor is included in brackets after the statutory language]

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

[The position of craps dealer is a highly sensitive and responsible position which represents, on both a symbolic and real level, the very heart of casino operations, and requires a high level of good character, honesty and integrity, not to mention the ability to deal well with the casino patrons];

(2) The nature and seriousness of the offense or conduct;

[The offenses of underage drinking, criminal trespass/burglary, and unlawful possession of a handgun are serious although none of the applicant's conduct involved any damage to persons or property. Underage drinking occurred at a casino bar, but there is some evidence that the applicant thought that he was permitted to drink, despite the fact that he was only 19 years of age. The criminal trespass/contempt and unlawful possession of a handgun offenses are both more serious, but involve mitigating circumstances as discussed below];

(3) The circumstances under which the offense or conduct occurred;

[The underaged drinking is mitigated by the applicant's belief that he was authorized to drink while only 19 under some kind of grandfathering provision, and the criminal trespass/burglary offense may be fairly characterized as a drunken prank involving the applicant and his companions, which got out of hand. Although the weapons offense is more serious than the other conduct, Mr. Silbert did not use or threaten to use that weapon, which belonged to another individual, who fled the scene and advised the applicant to dispose of the gun, which he, in a moment of panic, did];

(4) The date of the offense or conduct;

[Consumption of alcoholic beverage by a minor - October 24, 1983;

Criminal attempt/burglary - January 5, 1984;

Possession of a handgun without a permit - February 5, 1987];

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

[19 years of age in 1983;

19 years of age on January 5, 1984;

22 years of age on February 5, 1987];

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

[The applicant committed three criminal offenses between 1983 and 1987, but they were unrelated offenses in the sense that they involved different types of conduct, although each was characterized by the licensee's association with certain companions and the abuse of alcohol];

(7) The social conditions which may have contributed to the offense or conduct;

[Abuse of alcohol; social immaturity].

(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 applicant has successfully completed the terms of probation, performed community service on a voluntary basis, completed an inpatient alcohol rehabilitation program, and submitted the recommendation of persons who have or have had him under their supervision, all of whom attest to his good character and otherwise excellent work record];

Considering the above factors of rehabilitation as applied, and the overall requirement that the applicant establish good character, honesty and integrity, I **CONCLUDE** and recommend to the Commission that it grant Richard Silbert's application for renewal of his casino employee license. I reach this conclusion primarily on the basis of evidence of rehabilitation as discussed above and the licensee's increasing maturity. Mr. Silbert's problems were aggravated by alcohol abuse, from which he has been rehabilitated. His work record in the casino industry has been excellent and his conduct otherwise reflects increasing maturity. In effect, Mr. Silbert is asking the Casino Control Commission to give him another "roll of the dice", and I think that his record of rehabilitation is worth the gamble, notwithstanding his commission of three criminal offenses between 1983 and 1987.

DISPOSITION

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the renewal application of Richard Silbert for a casino employee license is **GRANTED**.

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

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decision in this matter. However if the Casino Control Commission does not so act in forty-five 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(c).

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

7.6.90
DATE

RICHARD J. MURPHY, ALJ

Agency Receipt:

7/9/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 12 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

On behalf of the petitioner:

P-1 Letter of recommendation from Fred A. Nehr, Jr.
P-2 Letter of recommendation, dated July 17, 1989, from Michael S. Faccenda
P-3 Letter of recommendation from William Shillingford
P-4 Letter of recommendation, dated July 16, 1989, from Michael Scardino
P-5 Letter of recommendation, dated July 14, 1989, from Delores E. Poston
P-6 Application for test acceptance for the Atlantic City Police Department
P-7 Application for order granting termination of probation
P-8 Letter, dated May 1, 1989, from the Marine Mammal Stranding Center, Bob Schoelkopf, Director
P-9 Letter, dated September 14, 1988, to Rick Silbert, from Reverend D. Rex Whiteman, Atlantic City Rescue Mission
P-10 Letter, dated June 6, 1989, to Rick Silbert, from the Atlantic City Rescue Mission
P-11 Letter from Richard T. Silbert, dated July 24, 1989
P-12 Voluntary statement given by Karen Berenato on November 16, 1986

On behalf of respondent:

R-1 FBI request for criminal history record information
R-2 Employee license renewal application
R-3 Complaint and New Jersey State Police investigation report
R-4 Atlantic City Police Department investigative report
R-5 Atlantic City Police Department investigative report
R-6 Indictment No. 87-02-0192-C, and judgment of conviction

WITNESSES

On behalf of petitioner:

Richard T. Silbert

On behalf of respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-256
REGISTRATION NO. 092989-40
OAL DOCKET NO. CCC 01816-90
ORDER NO. 90-50-12

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

Complainant,

v.

ORDER

ALBERT SMITH,

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; and the Commission having considered the entire record of these proceedings at its public meeting of December 19, 1990,

IT IS on this 18th day of December 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the casino hotel employee registration of Albert Smith is not revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 1816-90
AGENCY DKT. NO. 90-256

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
ALBERT SMITH,
Respondent.

R. Lane Stebbins, Deputy Attorney General for the petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Albert Smith, respondent, pro se

Record Closed: **September 27, 1990** Decided: October 26, 1990

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

PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on January 10, 1990, seeking the revocation of the casino hotel employee registration of the respondent, Albert Smith. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on March 6, 1990, to be

heard 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 telephone prehearing conference was held on May 15, 1990, at which time the parties agreed that the issues in this matter are:

A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c, to wit: N.J.S.A. 2C:17-1a, aggravated arson.

B. Whether the respondent may demonstrate rehabilitation pursuant to N.J.S.A. 5:12-91d.

The hearing took place on September 27, 1990, at the Office of Administrative Law in Atlantic City, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

I **FIND** the facts in this matter are not in dispute.

On March 29, 1987, Mr. Smith, his brother and several of his friends were standing in the street near his home when someone in the adjacent apartment building threw out an empty bottle which hit Mr. Smith on the head. Mr. Smith passed out for a short time and then he was in pain and dazed by the blow to his head. He was also upset and angry about being hit, and wanted to find who threw out the bottle. With his brother and friends he ran into the apartment building. They knocked on all the doors but were unable to find out who threw the bottle.

Mr. Smith felt he had to do something and so he lit matches and threw them into trash at various locations in the halls of the apartment building. He did not intend to start a real fire or to hurt anyone but he felt he had to take some action or lose face with his friends.

At the time of the incident, Mr. Smith was 21 years old and very concerned about his image. Mr. Smith felt that if he did nothing, he would be considered to be soft. Mr. Smith stated that his status with his friends was already threatened since he was the only one who had a regular job.

After he dropped the lighted matches, Mr. Smith, his brother and friends left the apartment building. Mr. Smith was still not feeling well, he left the group and went home to get some sleep. When he woke up, he was surprised to find that there had been a substantial fire in the apartment building and that his brother and friends had been arrested .

Mr. Smith went to the police and confessed that he alone was responsible for the fire. Thereafter, he was indicted for aggravated arson, violations of N.J.S.A. 2C:17-1a(1) and (2), and terroristic threats, a violation of N.J.S.A. 2C:12-3a (P-1). Mr. Smith pled guilty to one count of aggravated arson, a violation of N.J.S.A. 2C:17-1a(1), and was sentenced to a jail term not to exceed six years (P-2).

Mr. Smith was in the county jail for six months and then at the Yardville Youth Correction Facility for ten months. According to Mr. Smith, he was a good inmate, followed all the rules and attended classes. Mr. Smith was paroled on August 2, 1988, and he will be on parole until December 30, 1992. Mr. Smith has to report every six months to his parole officer. Lora W. Gaines, the respondent's parole officer submitted a letter in which she states that "Mr. Smith's readjustment in the community has been very positive" and that allowing him to retain his casino hotel employee registration would "only serve to enhance his continued positive adjustment and rehabilitation thus allowing him to continue to be a productive member of society" (R-1).

This is Mr. Smith's only criminal conviction, except for a drug violation (possession of a controlled dangerous substance) in 1985 when he was 19 years old. Mr. Smith was convicted and was placed on probation for the 1985 offense. At that time, he was part of a group using drugs, and he wanted to fit into the group and so he also used drugs. According to Mr. Smith, he was never an addict and he does not have to take urine tests for drugs as part of his parole.

Mr. Smith is a high school graduate and since he was in high school he has always had one or two jobs. Mr.Smith wants to become a chef and he plans to take cooking courses at the Atlantic County College.

When he was 13 years old, Mr. Smith got his first job in a restaurant and he worked there for five years. Robert J. Rosenfeld, the owner of the restaurant stated that Mr. Smith was a hard working, industrious, honest and loyal employee (R-3).

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Mr. Smith was hired to clean the restaurant and he worked his way up to food preparation and light cooking at the restaurant (R-2).

Mr. Smith then got a job as a dishwasher at the Los Amigos Restaurant in Atlantic City. During the three years he worked there, he had several promotion and was placed in charge of the kitchen. Peter G. Jones, the former manager of this restaurant, who is now employed by the Pumpernickle's Deli - Restaurant, wrote a letter on behalf of the respondent (R-2). In his letter, Mr. Jones stated that Mr. Smith was a reliable worker, who was able to deal with any problem and who was willing to work extra hours if someone did not come to work (R-2). Mr. Smith lost this job when he was incarcerated for the arson charge.

After he was released from jail, Mr. Smith went back to work at the Los Amigos Restaurant, but left this job since the working conditions were not the same. For a short period he worked for McGee Restaurant as a pastry cook and then for a short time as a cook at another restaurant. Mr. Smith obtained a casino hotel employee registration and he was initially employed by Bally's Park Place Casino Hotel and Tower (Park Place). According to Mr. Smith, his employment was suspended after about 50 days because of a mix-up regarding his paycheck. Apparently his paycheck was given to another employee named Smith. While the matter was being investigated, Mr. Smith worked for about two months as a cook for Bally Grand Hotel and Casino. After the investigation was completed and Mr. Smith was exonerated, he got back his job as a cook in Park Place. Mr. Smith is still working at Park Place (R-5), and he also has a part-time job as a breakfast cook at the Black Forest Restaurant.

Since his release from jail, Mr. Smith stated that he no longer associates with his prior friends and he now recognizes that it is not important to have a reputation of "being cool" or "bad." Mr. Smith has new friends and he has established goals for his future. Mr. Smith is engaged and he is saving money so he can afford to get married. The respondent's fiance, Patricia F. Upchuch testified and wrote a letter on behalf of the respondent (R-6), and she confirmed his testimony.

Additionally, the respondent's pastor wrote a letter stating that he is a good, hardworking person (R-4).

In closing, Deputy Attorney General R. Lane Stebbins argued that the Division has shown that the respondent was found guilty of aggravated arson, a violation of

N.J.S.A. 2C:17-1a(1), which is an automatic statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1). As to the rehabilitation issue, Mr. Stebbins stated that Mr. Smith had been convicted of a serious offense and that this criminal act took place only three years ago. He also noted that Mr. Smith had one prior criminal conviction.

Mr. Smith stated that he is now rehabilitated. Mr. Smith is now more mature, no longer associates with the wrong type of people, and does not drink or take drugs. According to Mr. Smith, he was young when the two offenses occurred and he has now learned his lesson and in the future he only wants to do the right thing.

CONCLUSIONS OF LAW

Based on the facts presented at the hearing, I **CONCLUDE** that the Division has shown a violation of N.J.S.A. 2C:17-1a(1), which is an automatic statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1).

Therefore, the only issue in this matter is whether the respondent has shown rehabilitation. The Casino Control Act sets forth the following factors which the Commission is to take into consideration in order to determine whether a person has demonstrated rehabilitation:

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

(2) The nature and seriousness of the offense or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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. [N.J.S.A. 5:12-91d]

In this matter, the respondent was a young man at the time he committed both criminal offenses. Although arson is a very serious offense, it is clear from the facts that this was a single foolish act by the respondent, done in anger and to impress his friends. Since his release from jail, Mr. Smith no longer has the same friends and recognizes that he should not engage in illegal behavior in order to have a reputation acceptable to his friends. Based on his testimony, there is no reason to believe that there will be any repetition of such criminal behavior in the future. Further, Mr. Smith has shown that he has an excellent employment record. Although the arson offense occurred only three years ago, based on all of the facts, I **CONCLUDE** that Mr. Smith has shown by clear and convincing evidence that he is rehabilitated pursuant to the standards contained in N.J.S.A. 5:12-91d.

Therefore, I **ORDER** that the respondent's casino hotel employee registration not be revoked.

I hereby **FILE** my initial decision with the **CASINO CONTROL COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is authorized to make a final decision in this matter. If the Casino Control Commission does not adopt, modify or reject this decision within 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.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHAIR OF THE CASINO CONTROL COMMISSION, 3131 Princeton Pike, Building 5, CN 208, Trenton, New Jersey 08625**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 26, 1990
Date

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

10-30-90
Date

Lorraine Hart
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 01 1990
Date

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

cad

1238

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Indictment filed against the respondent, Indictment No. 87-04-0751/C

P-2 Judgment of Conviction and Order for Commitment as to the indictment filed against the respondent

For the Respondent:

R-1 Letter dated September 24, 1990, from Lora W. Gaines

R-2 Letter from Peter S. Jones

R-3 Letter dated September 20, 1990, from Robert J. Rosenfeld

R-4 Letter of the pastor of the House of God Church

R-5 Letter form Blanca Zayas, Benefits and Record Representative for Bally's Park Place Casino Hotel and Tower, dated September 25, 1990

R-6 Letter from Patricia F. Upchuch, dated September 12, 1990

WITNESSES:

For the Petitioner:

Albert Smith

For the Respondent:

Albert Smith
Patricia F. Upchuch

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-289
REGISTRATION NO. 016224-40
OAL DOCKET NO. CCC 8353-89
(ON REMAND CCC 4161-89)
ORDER NO. 90-45-10

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

Complainant,

v.

KENNETH P. SMITH,

Respondent.

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 November 14, 1990,

IT IS on this 10th day of December 1990, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that Kenneth P. Smith's casino hotel employee registration is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Kenneth P. Smith 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.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 8353-89
(ON REMAND CCC 4161-89)
AGENCY DKT. NO. 89-289

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
KENNETH P. SMITH,
Respondent.

James J. Armstrong, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Kenneth P. Smith, respondent, pro se

Record Closed: September 27, 1990 Decided: October 1, 1990

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

On March 28, 1989 the Division of Gaming Enforcement filed a complaint with the Casino Control Commission seeking revocation of the respondent's casino hotel employee registration. Mr. Smith 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.

Following transmittal the case was preheard before Administrative Law Judge Edgar R. Holmes on February 5, 1990, and Judge Holmes issued a prehearing order on February 6, 1990. Subsequently a hearing was held before Administrative Law Judge Jeff S. Masin on June 5, 1990, at the Absecon Municipal Court. The record closed following conclusion of testimony.

ISSUES

The prehearing order established the issues for consideration at the hearing as whether Mr. Smith's

> continued registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he is alleged to have committed a violation of N.J.S.A. 2C:20-4, fourth degree theft.

In addition, "whether respondent may demonstrate rehabilitation pursuant to Donna Davis, 8 N.J.R. 301."

EVIDENCE

At the hearing the Division presented documentation establishing that Mr. Smith was indicted by the Atlantic County Grand Jury in Indictment 88-10-2731-C-CP for theft by unlawful taking in the third degree in that he allegedly took seafood and steaks from the Atlantic City Showboat, Inc., t/a Showboat Hotel, Casino and Bowling Center, the pilfered items being valued in excess of $500, in violation of N.J.S.A. 2C:20-3. In addition, the state presented a Judgment of Conviction showing that Smith pled guilty on January 25, 1989 to an amended charge of theft by unlawful taking under $500, a fourth degree crime, and that he was sentenced to one-year probation, a $30 payment to the Violent Crimes Compensation Board, a $250 restitution and a $500 fine with the probation to terminate upon payment of all monies. The sentencing judge, Honorable Steven P. Perskie, then presiding judge of the criminal division, indicated that his sentence was based upon his determination that the fine was sufficient to punish and deter the defendant and that the defendant's last conviction had occurred 12 years ago.

Mr. Smith was called as a witness and testified that he in fact did commit the theft. At the time he was having a very difficult time with his life and about two months before the theft his one-and-a-half year old son had died. Apparently his son was in the custody of the child's mother, who was involved with drugs. It is not clear from the testimony the exact reasons for the child's death however, not surprisingly Smith indicated that this affected him severely and he "mentally lost it" and had an attitude that he did not care what happened. Prior to the child's death he had been commuting between Atlantic City and New York in order to see the child and as a result had asked for a leave of absence which was denied. He then

decided not to come to work and was placed on suspension. When he talked to the executive chef to try to obtain some relief he got the "run around."

In addition Smith indicated that he was affected by a drinking problem. He ultimately realized that he was not getting anywhere and he had no job or money and felt that the only way out was to get a grip on himself. He received guidance on a weekly basis from someone who he described as a "non-professional" and "began to regroup." About eight and one-half months ago he began working for Bally's Park Place as a cook and has had no problems with his employment since that time. Smith is currently 32 years old, is planning on getting married, and supports a ten-year-old daughter, who does not live with him but whom he sees regularly. He has paid his fine and has been off probation since December 2, 1989.

Smith explained that at and about the time of the theft he felt that he was a "nobody" and that "nobody cared about him." He has since developed a new attitude.

Smith acknowledged that he stole 12 steaks and 4 boxes of seafood. He worked at the restaurant where the theft occurred and was normally off on Sunday and Monday and was unaware that the restaurant was closed on Sunday. He admitted that he went to the facility, offered $25 to an employee who was on duty as an inducement to allow him to take the items and that that individual turned down the money, although he apparently did not present Smith from taking what he wanted. According to the respondent he took the items as the "way of supporting himself" and sold some of the food. At the time he was sleeping any place he could, including on the boardwalk, and was drinking on street corners. He had lost all of his self-respect and was at an extreme low point.

On cross-examination Smith was asked whether he was an alcoholic and he said that he never actually determined this, although he had spoken to someone at the detoxification facility at the Atlantic City Medical Center and as a result of his conversation he did not feel that he had an actual alcohol problem. He controls his drinking and will have two or there beers, but does not become intoxicated. He now has a sense of responsibility and is trying to make his life better.

Finally, Smith noted that while employed at the Showboat he had been doing a good job, but felt that he was overlooked when advancement opportunities were presented. The company would bring in outside individuals who really did not know

what they were doing, but they would be placed in positions which he was seeking and would then come to him for advice on how to perform their work.

In addition to his own testimony, the respondent presented letters from individuals supporting his good character. Among these are one from Ronald Davison, who indicates that he has known Smith for eight months and that he has "always proven to be a loyal and dependable employee." Michael Siegal, a sous chef at Bally's, indicates that Smith "has worked under me eight months and in this time he has progressed and learned a great deal. He is an important asset to us. When he sets his mind to something there is always good results."

At the hearing, Mr. Smith advised that he had intended to present in evidence a statement from the Probation Office concerning the termination of his probation. However, because the hearing location had been switched at the last moment from the courthouse in Atlantic City to the Absecon Municipal Court, he had been unable to pick up the statement the morning of the hearing, as he had intended to do. He was, therefore, advised that he would be permitted to obtain the statement and submit it to the administrative law judge by mail.

On June 21, 1990, the administrative law judge received an envelope addressed from Mr. Smith to Judge Masin, containing an APPLICATION FOR ORDER GRANTING TERMINATION OF PROBATION. This document is on an official Atlantic County Probation Department form and bears the signatures of Probation Officer Mark Franks, an unreadable signature of the Chief Probation Officer, and a signature of Honorable Dennis J. Braithwaite, P.J.Cr. Upon examining the form, the administrative law judge noted that next to the printed word "Recommendations" was typed "Terminate probation with . . . improvement." The word "with" was immediately followed by an ink mark which appeared to be approximately the size of three letters. Because of this marking, the ALJ was concerned as to whether or not the document had been changed and he therefore wrote to the Atlantic County Probation Department requesting that a certified copy of the original document be transmitted. Upon receipt of that document, which is C-4 in evidence, the judge discovered that the certified copy showed the "Recommendations" section as reading "Terminate probation without improvement." Based upon the apparent change in the document submitted by Mr. Smith, the administrative law judge wrote the parties on July 30, 1990 advising that it would be necessary to schedule an additional hearing date in order to provide the parties with the opportunity to

address themselves to the condition of the submitted application J-1 and the significance thereof.

On September 30, 1990, the parties appeared in front of Judge Masin at the courthouse in Atlantic City. At that time, the certified application, as well as the application submitted by Mr. Smith and the correspondence between the Probation Office, Judge Masin, and the parties, was introduced into evidence. Thereafter, Mr. Smith testified that because of his work schedule he had been unable to go to the Probation Office to pick up the document during regular business hours and as such he had handwritten the envelope, which was eventually sent to Judge Masin, and had sent his sister to the Probation Office for the purpose of picking up the document, putting it in the mail, and mailing it to the address which he had placed on the document. According to Mr. Smith, his sister did so and after he received the Judge's July 30, 1990 letter advising of the difference between the originally submitted Application and the certified copy of the Application, he asked his sister "many times" whether she had made any change on the document. She denied this and insisted that she had simply taken the document, placed it in the envelope, and placed it in the mailbox. Mr. Smith insisted that he had never seen the document until he received the photocopy of both the application which she had submitted and the certified copy, which were sent as part of Judge Masin's July 30, 1990 correspondence. According to Mr. Smith, he "wouldn't do anything to jeopardize his position because his "license was on the line," he was "trying to maintain his license, not get rid of it."

Mr. Smith's sister did not appear at the hearing. According to him, she is 25 years old and was attending a job training program on the day of the hearing. No affidavit or other correspondence from her was submitted in evidence.

DISCUSSION

This case presents the all too familiar situation of a casino employee or registrant who commits a theft from his employer, or who engages in some illicit conduct, and then, prior to the time that the matter proceeds to hearing and determination on an application to revoke a license or registration, becomes employed again in the industry and performs quite well in the subsequent employment. There is no doubt that at first blush an individual who acts as Smith did, stealing from his employer, is an individual ripe for revocation of license or registration. The time delay which normally arises in cases of this nature often works

to the benefit of licensee or registrant in that they can at the time of the hearing present evidence that they have successfully operated within the industry since their improper conduct occurred.

There is no question but that Smith did steal a significant amount of food from his employer. The state police report indicates that the value was $769 and there is no evidence to the contrary other than Smith's recollection that the amount he stole was not quite as great as the report reveals. The important thing here is not exactly how much was taken, but the fact that it was stolen. I **FIND** that Mr. Smith did commit the offense of theft and that the more likely evidence indicates that it was valued in excess of $500. In addition, I **CONCLUDE** that Mr. Smith has completed his probation by paying the amount due. Therefore, the question is whether his continued licensure at this time would be inimical.

Based upon my observations of Mr. Smith and the testimony which he gave at the original hearing, I was convinced at that time as to the credibility of his explanation concerning his life circumstances at and around the time that this incident of theft occurred. I have no doubt that the loss of his child was devastating and that even prior to that time he was having some difficulty handling his work responsibilities and his parental obligations and dealing with the travel time and demands which these imposed upon him. In addition, although he denied being an alcoholic, it appears that the circumstances may have led him into some excessive use of alcohol, which, while perhaps no longer a problem, at the time was a contributing factor to his downfall.

Initially, although he did not present expert evidence in support of the extent and depth of his psychological problems at the time of the incident in question, I was sufficiently convinced about Mr. Smith's situation as to find that his description of the reasons for his illegal conduct was believable. Thus, based upon the original testimony I would likely have found Mr. Smith to be a credible witness and would have quite probably concluded that he had returned to the casino industry, successfully and properly conducted himself, and that his continued registration would not be inimical to the policies of the Casino Control Act or the interests of the gaming industry. This finding would have been despite a general belief that theft from an employer is a quite serious offense, one which in most circumstances requires that the miscreant be barred from the industry.

However, whatever my initial thoughts concerning this matter may have been, the situation which developed upon Mr. Smith's submission of the application for termination of probation has drastically altered my thinking. After receiving the document and finding that its condition raised serious questions about whether I have received what had actually been issued by the Probation Department, and after discovering that, in fact, there appeared to have been an alteration, I provided Mr. Smith with an opportunity to come forward and explain the situation. As noted above, according to Mr. Smith, he is totally without fault as to any alteration of the document and his sister, who he claims was the only person who had any contact with the document on his behalf, also purportedly denies any involvement in placing the ink on the page.

Mr. Smith's testimony concerning his sister's alleged statements is hearsay and is unsupported by any residuum of competent evidence. If the situation is as serious to Mr. Smith as he lets on, and certainly it should be, it seems surprising that he would have neither produced his sister at the hearing, nor at least brought a letter or affidavit from her explaining that she picked up the document, mailed it, and never changed anything. However, no such evidence was produced.

As for Mr. Smith's explanation, I must conclude that he did not testify truthfully. Having examined the document and considered his testimony, it is my belief that in fact he did see the document, that he thought might have a difficult time in light of the comment that his probation had been terminated without improvement, and that he took a chance and altered the document, hoping that the judge would merely believe that the Probation Office had crossed out the "out" because a typist had mistakenly placed it on the page. However, a statement that probation was terminated without improvement is entirely consistent with the comments on the page indicating that Mr. Smith's conduct while under supervision was only "fair" and that he "marginally completed with the conditions of probation." I strongly suspect that the word "completed" is a misstatement, and was in fact intended to be "complied." Nevertheless, the internal consistency of the document with the word "without" is clear.

Based upon an assessment of Mr. Smith's credibility in connection with the altered probation form, I must to some degree reassess his entire testimony in this case. While I am unwilling to conclude that he lied concerning the full circumstances which led him to steal from his employer, I nevertheless conclude that licensing this individual would be inimical to the indusry's interests and to the policies of the

Casino Control Commission. There is no question in my mind that Mr. Smith, in order to attempt to retain his license, presented an altered document as evidence in this case. Such conduct is both highly reprehensible and clearly indicative of an individual who does not belong in the highly regulated casino industry.

For the reasons expressed, I **CONCLUDE** that Mr. Smith's continued licensure would be inimical to the policies of the Casino Control Act and the interests of the casino industry. Therefore, his registration must be revoked. It is so **ORDERED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 1, 1990
DATE

JEFF S. MASIN, ALAJ

Receipt Acknowledged:

10-3-90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 5 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

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EVIDENCE LIST

Joint exhibit:

J-1 APPLICATION FOR ORDER GRANTING TERMINATION OF PROBATION, with date stamp of June 21, 1990

Court exhibits:

C-1 Letter of June 22, 1990 to Steven T. Green, Chief Probation Officer, Atlantic County Probation Department

C-2 Undated letter from Steven T. Green to Administrative Law Judge Masin

C-3 Letter of July 30, 1990 from Judge Masin to James J. Armstrong and Kenneth B. Smith

C-4 Certified copy of APPLICATION FOR ORDER GRANTING TERMINATION OF PROBATION

On behalf of petitioner:

P-1 New Jersey State Police Investigation Report, 2 pages, dated August 11, 1988

P-2 Atlantic City Municipal Court Complaint S205610

P-3 Indictment 88-10-2731-C-CP

On behalf of respondent:

R-1 Letter of May 18, 1990 from Blanca Zayas

R-2 Handwritten note of June 4, 1990 from Michael Siegel

R-3 Letter of June 4, 1990 from Ronald Davison, with attached handwritten note from Davison

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-195
REGISTRATION NO. 050316-40
OAL DOCKET NO. CCC 02846-90
ORDER NO. 90-35-9

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

Complainant,

v.

JAMES H. STREEPER,

Respondent.

ORDER

A hearing 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; and the Commission having considered the entire record of these proceedings at its public meeting of September 5, 1990,

IT IS on this 12th day of September, 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Commission order No. 87-32-14-G which revoked the respondent's casino hotel employee registration is vacated; and

IT IS FURTHER ORDERED that the complaint is dismissed

substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2846-90
AGENCY DKT. NO. 85-195

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
JAMES H. STREEPER,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

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

Record Closed: June 5, 1990 Decided: July 17, 1990

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

The Division of Gaming Enforcement ("Division") filed a complaint with the Casino Control Commission ("Commission") on May 15, 1985 seeking revocation of Mr. Streeper's casino hotel employee registration because of his alleged conviction for distribution of methamphetamine, in violation of 21 U.S.C. 841, a crime which is allegedly comparable with N.J.S.A. 24:21-19(a)(1). The Commission initially revoked Streeper's registration by order of August 20, 1987, but by order of April 6, 1990 the matter was sent to the Office of Administrative Law for a hearing.

A prehearing conference was held on May 15, 1990 before Honorable Jeff S. Masin, A.L.J. A prehearing order was issued by Judge Masin on May 25, 1990. A hearing was then held before the judge on June 5, 1990 at the Absecon Municipal Court. The record closed following completion of the hearing.

ISSUES

The issues listed in the prehearing order were whether Mr. Streeper had been convicted of conduct which constituted an automatic disqualification from licensure, pursuant to N.J.S.A. 5:12-86c(1) and whether he had rehabilitated himself from any such disqualification, as permitted by N.J.S.A. 5:12-91e.

EVIDENCE

At the hearing the Division presented a copy of a complaint charging Mr. Streeper and two codefendants with violations of 21 U.S.C. 841 and 846, in that they allegedly knowingly, intentionally and willfully conspired to manufacture and attempted to manufacture methamphetamine, a Schedule II, non-narcotic drug controlled substance. In addition, the Division offered a Judgment and Probation/Commitment Order issued by the United States District Court for the Eastern District of Pennsylvania on Dkt. No. 81--0003-2, United States of America v. James Streeper, which indicates that Streeper was convicted of distribution of methamphetamine, 21 U.S.C. 841, and was sentenced to three years imprisonment, which was suspended. He was placed on five years probation, the first three of which were under strict supervision. The imposition of sentence on three additional counts was suspended.

Mr. Streeper testified that he is 46 years old and a resident of Brigantine. He is the holder of a GED diploma and served for nine years in the United States Marine Corps, serving two tours in Vietnam where he was awarded the Bronze Star, Purple Heart and Silver Star. Thereafter, Streeper was employed at the Valley Forge Military Academy as a Warrant Officer in charge of grounds keeping and facilities. He left Valley Forge in 1968 and became a regional manager for Building Maintenance Corporation, in charge of 43 buildings and 450 people. He left this job in 1972 and went to work for Zimmerman Engineering as a manager of buildings, supervising 23 properties from 1972 to 75 and then went to work for a social service program in Philadelphia as the director of operations. This program was known as Impact Services and it was a organization which dealt with ex-offenders and addicts

and obtained jobs for them. The operation involved the obtaining of contracts and training 175 people and supervisors in various businesses. Streeper was involved with this project from 1975 to 81.

In 1980 Streeper "got caught up" with the people at work and thought he had found an easy way to make money. He became involved in the distribution of methamphetamine, admitting at the hearing that he provided two grams of methamphetamine in circumstances involving an undercover agent. He regrets this activity to this day and has not been involved in any further criminal matters. He admitted that his involvement arose from his belief that he could make a lot of money. At the time his son's hands needed to be "rebuilt" because they lacked a number of digits and the anticipated cost of the operation was $75,000. This was the financial motivation for his involvement with the controlled dangerous substance.

Streeper presented a letter dated March 5, 1990 from his probation officer in which the probation office advised him that they were certifying his completion of the five-year probation period imposed by the federal court. The probation expired on March 29, 1986, with Streeper having satisfactorily completed the probation term with "favorable adjustment."

The respondent testified that following his criminal involvement he was employed at the Cherry Hill Inn as a facilities manager and executive housekeeper and then from 1981 to 83 he was an operator of Envirocom Cleaning Services, a residential and commercial cleaning operation in South Jersey and Pennsylvania, where he supervised up to 63 people. Many of the clients had summer homes for which Streeper personally held keys in order to admit the cleaning personnel. He was also employed from 1983 until this past summer, driving a limousine for Michael's Limousine Company of Brigantine, working 75 to 80 hours a week. He phased out his involvement with Envirocom and now works for General Limousine of Atlantic City as a limousine driver. He has been offered a job at the Taj Mahal as a driver.

The witness testified that he has been involved in the Marine Corps League and its Toys for Tots Crusade and golf tournament for crippled children. He also has had some limited involvement with the American Legion. He denied any involvement in any drug activity of any type since 1980.

On cross-examination the witness admitted that he did tell undercover personnel at the time of his involvement in the methamphetamine operation that he had been manufacturing it for eight years and that he had a place in which to do the manufacturing. He described the entire circumstance as a "game," apparently implying that there was a good deal of "puffing" going on in the conversations between the various actual and undercover participants in the scheme and that the conversations concerning prior manufacturer and locations for such work were done to impress the others supposedly involved. The distribution involved the giving of a "sample"to an undercover agent. He never told anyone that he had "laundered" money. His associate in the plot, one Anthony Caulfield, provided the chemicals for the operation. Caulfield was an individual who he had met through his work with Impact Services and was a personal friend.

In 1979 Mr. Streeper had bought a car in Pennsylvania for $1,500. The title was to be delivered to him that night. In fact, the car, a 240 ZX, was stolen and when he was stopped by the police he was arrested. He ultimately entered a pre-trial intervention type of program and the matter was dismissed.

DISCUSSION

The evidence in this case establishes that Mr. Streeper was in fact convicted of distribution of methamphetamine, an offense against the laws of the United States and one which is comparable to the New Jersey Statute, N.J.S.A. 24:21-19(a)(1). Streeper does not deny the conviction and the documents presented establish it.

The ultimate question for consideration is therefore whether Streeper has rehabilitated himself from the disqualifying conduct. This conviction occurred in 1981 and involved conduct which apparently occurred in 1980. The distribution itself was apparently limited in scope. Conversations between the purported participants may have implied an operation which was either proposed to be, or perhaps was in fact larger in scope. Nevertheless, it appears that in treating the sentence, the district court judge concluded that a probationary period was appropriate. This seems to imply that the scope of Streeper's involvement was not deemed so significant as to require that he be incarcerated.

Mr. Streeper successfully completed his probation and has not been in any trouble either during or after the probationary period. The testimony concerning his history prior to the criminal activity indicates that he is a decorated Vietnam

veteran and that he held a number of fairly significant supervisory positions in the building maintenance field after his involvement with the military. He has continued in maintenance/cleaning type operations subsequent to his conviction, although he now is involved in limousine driving.

Mr. Streeper's conduct in 1980 cannot be condoned, despite his claim that his motivation for seeking financial gain was related to and motivated by his child's need for expensive surgery. Distribution of methamphetamine is a serious offense, which might well have led to possibly devastating consequences for other children or adults. The criminal conviction hopefully has served to drive home to Streeper both the seriousness of the offense and the consequences arising from such involvement. Since his conviction and the start of his probation he has apparently had a successful adjustment. It is of some significance that the probation expired in 1986 and there has been no indication of any wrongdoing since that time.

Based upon the above and in view of the criteria set forth in the statute, I **FIND** that Mr. Streeper was involved in serious conduct of a criminal nature which would constitute an automatic disqualification from licensure. At the time that he engaged in this conduct he was in his mid-30's and should have been sufficiently mature to understand the seriousness and the social implications of his conduct. Nevertheless, it appears that his activity was limited and hopefully aberrational in nature. He has paid a penalty of some significance and has made a proper adjustment to probationary and post-probationary status. He has maintained employment throughout his life since his release from the Marines and has held some jobs of significance. He remains employed to this day.

Considering all of the above, I am convinced that Mr. Streeper has established his rehabilitation by clear and convincing evidence, as required by N.J.S.A. 5:12-91e. Therefore, he is entitled to retain his casino hotel employee registration. The complaint is therefore **DISMISSED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 17, 1990
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

7-18-90
DATE

Dolores Dost
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 20 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

jz

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EVIDENCE LIST

On behalf of petitioner:

P-1 Complaint for Violation of U.S.C. Title 21 U.S.C. § 841, 846, The United States of America v. James Streeper, Anthony Caulfield and Francis Reichel, Complaint 80-167, United States District Court for the Eastern District of Pennsylvania

P-2 Judgment and Probation/Commitment Order, The United States of America v. James Streeper, The United States District Court for Eastern District of Pennsylvania, on behalf of respondent

On behalf of respondent:

R-1 Letter of March 5, 1990 from The United States District Court Probation Office, District of New Jersey

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-139
APPLICATION NO. 76000-21
REGISTRATION NO. 76799-40
OAL DOCKET NO. CCC 00430-90
ORDER NO. 90-39-10

APPLICATION OF JEFFREY L. STROUSE
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 the Commission having considered the entire record of these proceedings at its public meeting of October 3, 1990,

IT IS on this 2nd day of November 1990, ORDERED that the initial decision is modified as follows:

> The ALJ's conclusion that the applicant established his rehabilitation by a preponderance of the evidence but less than the required clear and convincing standard is rejected as an unnecessary distinction.

IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that Jeffrey L. Strouse is prohibited from reapplying for or obtaining 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

ORDER NO. 90-39-10

IT IS FURTHER ORDERED that this denial shall not affect Jeffrey L. Strouse's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 430-90
AGENCY DKT. NO. 90-EA-139

JEFFREY L. STROUSE,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

Jeffrey L. Strouse, the petitioner, pro se

R. Lane Stebbins, Deputy Attorney General, for the respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: August 7, 1990 **Decided**: August 15, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Jeffrey L. Strouse, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (security employee-electronics technician), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had been convicted of a disqualifying offense under section 86c(1), and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a security employee-electronics technician at Resorts International Hotel and Casino. By letter to the Commission, dated October 11, 1989, the Division objected to the petitioner's application for licensure as a security employee, asserting that the petitioner had been convicted of two counts of aggravated assault with a deadly weapon, in violation of N.J.S.A. 2C:12-1b(2) (third degree), and that he had been convicted by military court-martial of possession of a controlled dangerous substance (methamphetamine) with the intent to distribute, which is analogous to a violation of N.J.S.A. 2C:35-5 (third degree), which are disqualifying offenses under section 86c(1). The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on November 13, 1989, that there were questions raised concerning his qualification under the Casino Control Act and that he had the right to a hearing. By application dated November 27, 1989, which was received by the Commission on December 19, 1989, the petitioner requested a hearing. On January 10, 1990, the Commission transmitted the matter to the Office of Administrative Law, which received it on January 19, 1990, 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 in the matter was held before me on April 17, 1990. The issues set forth at the prehearing conference to be resolved at the hearing were

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:12-1b(2), aggravated assault (two counts).

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A 5:12-89b(2) as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on August 7, 1990, in the Office of Administrative Law, Atlantic County Civil Court House, Atlantic City, New Jersey, after which the record closed.

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FACTUAL DISCUSSION

In June 1984, when the petitioner was 24 years old, he was arrested by the Delaware State Police and was charged with resisting arrest, offensive touching and failure to stop on command. The charges resulted from a domestic argument in which the police became involved. During the course of the argument, the petitioner pushed a police officer. The petitioner was convicted in municipal court of failure to stop on command. The remaining two charges were dismissed. The petitioner's driver's license was suspended for one year as a result of this incident.

In March 1985, while on active duty in the United States Air Force and assigned at Dover Air Force Base, Delaware, the petitioner was arrested and charged with possession of a controlled dangerous substance (methamphetamine) with the intent to distribute. The petitioner was experiencing marital and financial problems and he was told selling drugs was a quick way to make money. He was arrested shortly after commencing his drug activities. As such, he sold only one eighth of one ounce of methamphetamine and was in possession of two grams of methamphetamine. The petitioner had been using methamphetamine approximately once a week for approximately one month. The petitioner pleaded guilty and was convicted by a general court-martial of possession of a controlled dangerous substance (methamphetamine) with the intent to distribute. He was sentenced to serve 20 months in prison, was reduced to the grade of E-1, and was separated from the service with the issuance of a bad conduct discharge (R-1).

On October 7, 1988, the petitioner was depressed about his divorce and not being allowed by his former wife to visit his children. He went to Rosey's Tavern in Dorothy, New Jersey, to drink and shoot pool. While playing pool, another intoxicated patron, Barry O'Sullivan, began ridiculing and criticizing the petitioner. Words were exchanged between the two men. Mr. O'Sullivan's girlfriend, Laurie Taylor, entered the argument. A fight ensued, and the petitioner threw an ashtray at Mr. O'Sullivan and Ms. Taylor. The fight ended and the parties departed.

On October 10, 1988, the petitioner went to the local state police barracks, explained what had occurred, and was arrested (R-3). On December 1, 1988, the petitioner was indicted in the Superior Court of New Jersey, Law Division-Criminal, Atlantic County, Indictment No. 88-12-3082-C, and was charged with aggravated assault causing serious bodily injury (Counts one and two), in violation of N.J.S.A. 2C:12-1b(1); aggravated assault with a deadly weapon (an ashtray) (Counts three

and four), in violation N.J.S.A. 2C:12-1b(2); unlawful possession of a weapon (a beer mug) (Count five), in violation of N.J.S.A. 2C:39-5d; and possession of a weapon (a beer mug) for an unlawful purpose (Count six), in violation of N.J.S.A. 2C:39-4d (R-2). On January 23, 1989, the petitioner entered an original plea of not guilty to the charges. On February 21, 1989, the petitioner retracted his plea and entered a guilty plea to Counts three and four of the indictment. On March 17, 1989, the petitioner was convicted of Counts three and four of the indictment, aggravated assault with a deadly weapon, and the remaining counts of the indictment were dismissed. The petitioner was sentenced on each count to serve 270 days in the Atlantic County jail, to be placed on probation for two years, and to pay a $30 Violent Crimes Compensation Board penalty ($60 total). The sentences were to be served concurrently. The petitioner was also ordered to make restitution in the amount of $481 for medical bills (R-3). The petitioner was released on parole in June 1989 and entered a work release program. The petitioner satisfactorily completed his parole supervision and is now serving his probationary period. The petitioner has paid most of the court ordered restitution.

The petitioner was born on September 24, 1961, and he is now 28 years of age. He was raised by his parents along with four brothers and sisters in Estell Manor, New Jersey. He graduated from Buena Regional High School in 1979. He is a volunteer fireman in Estell Manor.

From 1979 through 1981, the petitioner was employed at Spencer's Gifts in Atlantic City. In 1981, the petitioner entered the Air Force. He rose to the grade of E-4, senior airman, until his court-martial in 1985. He was discharged upon his release from confinement in 1986. He then worked for several months as a salesman for Culligan Water Conditioning and then as a temporary technician for Diamond State Telephone. In April 1987, he received a casino hotel employee registration and began work as a records retention clerk at Harrah's Marina Hotel and Casino. In August 1987, he left this position as he found employment in his career field. He became employed as a camera technician for Electro Alarms Custom Systems. This is a company owned by Resorts that maintains the security system and cameras at Resorts International Hotel and Casino. The petitioner was an outstanding employee for Electro Alarms; however, he left this position due to his incarceration in March 1989. Since his release, he has held various jobs in the electronics industry, and he currently does piecework for a television repair shop in Ocean City.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence, it appeared that the petitioner testified truthfully in substantial regard. He admitted his misconduct and described the underlying circumstances; however, he attempted to minimize his involvement and the seriousness of the offenses. Accordingly, I am persuaded to accept the petitioner's testimony in substantial part.

As the above **FACTS** are not in dispute, I **FIND** all of the above as **FACT**.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . . .
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> . . . .
>
> N.J.S. 2C:12-1b (aggravated assault which constitutes a crime of the second or third degree);
>
> . . . .
>
> N.J.S. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance or a controlled dangerous substance analog which constitutes a crime of the second or third degree);

. . . .

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino

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experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . . .

e. 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.

. . . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION

The Division contends that the petitioner was convicted of N.J.S.A. 2C:12-1b(2), aggravated assault with a deadly weapon (third degree). The Division further contends that the petitioner was convicted by a military court-martial of possession of a controlled dangerous substance (methamphetamine) with the intent to distribute which is analogous to a violation of N.J.S.A. 2C:35-5a(1). The Division

asserts that these convictions constitute violations of section 86c(1), and that, accordingly, he is disqualified from licensure.

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's involvement in a fight in Rosey's Tavern constitutes a violation of N.J.S.A. 2C:12-1b, which under the circumstances disqualifies the petitioner from licensure. The Division further contends that the petitioner's possession of methamphetamine with the intent to distribute constitutes a violation of N.J.S.A. 2C:35-5, which under the circumstances disqualifies the petitioner from licensure.

N.J.S.A. 2C:12-1, Assault, provides in pertinent part:

> b. Aggravated Assault. A person is guilty of aggravated assault if he:
>
> . . . .
>
> (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon;
>
> . . . .
>
> Aggravated assault under subsection b. (1) is a crime of the second degree; under subsection b. (2) is a crime of the third degree; under subsection b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree.

The Division established, and the petitioner admitted during his testimony, that he knowingly engaged in a fight and threw an ashtray at his victims. The Division further established, and the petitioner admitted during his testimony, that he was convicted of aggravated assault with a deadly weapon, in violation of N.J.S.A. 2C:12-1b(2). Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:12-1b and that the petitioner was convicted of a violation of N.J.S.A. 2C:12-1b. I further **CONCLUDE** that, pursuant to N.J.S.A 2C:12-1b, the offense constitutes a crime of the third degree.

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N.J.S.A. 2C:35-5, Manufacturing, distributing or dispensing, provides in pertinent part:

> a. Except as authorized by P.L. 1970 c. 226 (C.24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:
>
> (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled dangerous substance analog; or
>
> ....
>
> b. Any person who violates subsection a. with respect to:
>
> ....
>
> (8) Methamphetamine, or its analog, in a quantity of one ounce or more including any adulterants or dilutants, is guilty of a crime of the second degree;
>
> (9) Methamphetamine, or its analog, in a quantity of less than one ounce including any adulterants or dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S 2C:43-3, a fine of up to $50,000.00 may be imposed.
>
> ....

The Division established, and the petitioner admitted during his testimony, that he knowingly possessed two grams of methamphetamine with the intent to sell the drug. The Division further established, and the petitioner admitted during his testimony, that he was convicted by a military court-martial of possession of a controlled dangerous substance (methamphetamine) with the intent to distribute. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation analogous to a violation of N.J.S.A. 2C:35-5 and that the petitioner was convicted of an offense which is analogous to a violation of N.J.S.A. 2C:35-5b(9). I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-5, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offenses committed by the petitioner are disqualifying offenses under section 86c(1). The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1).

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(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 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 or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the applicant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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.

In regard to the first criterion, Mr. Strouse is applying for a position as a non-gaming casino licensee as a security employee-electronics technician. As such, he will not have direct responsibilities for actual gaming activities and will not come in contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:12-1b, aggravated assault with a deadly weapon, on one occasion while employed in the casino industry. The petitioner also committed an offense which is analogous to a violation of N.J.S.A. 2C:35-5, possession of a controlled dangerous substance (methamphetamine) with the intent to distribute, over a two-week period. Because the offenses are listed as disqualifiers under section 86c(1), they are very serious. In addition, one offense is a crime of violence against another person and the second offense is a drug offense. Such conduct cannot be condoned or tolerated.

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Third, the seriousness of the offenses must be viewed in their appropriate context. With regard to the aggravated assault, the petitioner was depressed about his divorce and not being able to visit his children. He went out drinking and began to play pool. Another intoxicated patron began ridiculing and criticizing the petitioner and a fight ensued. With regard to the drug offense, the petitioner was experiencing domestic and financial difficulties. He submitted to peer pressure and a quick way to make some extra money. His involvement in illicit drug sales lasted no more than two weeks, as he was caught. The petitioner testified against his supplier in court.

Fourth, the respondent's drug misconduct occurred in 1985 and the aggravated assault occurred in 1988, when it ceased.

Fifth, the respondent was 23 years old at the time of the drug offense and 26 years old at the time of the aggravated assault. I do not believe immaturity was a factor in this case.

Sixth, the respondent's misconduct was not isolated in nature. In 1984, he was convicted of failure to stop on command, in 1985, he committed the drug offense, and in 1988, he committed the aggravated assault. The petitioner asserts that the aggravated assault was an isolated act of violence.

Seventh, all three offenses in some way involved domestic problems. In addition, the petitioner succumbed to peer pressure and financial difficulties when he turned to selling methamphetamine.

Eighth, the petitioner has served two periods of incarceration. He attended drug counseling while incarcerated by the Air Force, and he has not returned to drug involvement. After the aggravated assault conviction the petitioner participated in alcoholics anonymous, successfully completed his parole supervision and his work release program, and he is making satisfactory progress on probation. He has nearly completed making restitution, and he is current in making child support payments. He is a member of a volunteer fire company. He was an outstanding employee as an electronics technician while employed at Resort's. The petitioner is remorseful and does not believe his misconduct is likely to reoccur.

In this case, the petitioner is required to establish his rehabilitation by clear and convincing evidence. The Commission explained the differences in the evidentiary standards in In re Boardwalk Regency Casino Application, 10 N.J.A.R. 295 (1980). At pages 297 and 298 of that decision the Commission stated:

> Sections 84 and 89(b) of the Act set forth the criteria which a casino license applicant and other persons required to be qualified as a condition of such licensure must affirmatively establish by clear and convincing evidence. N.J.S.A. 5:12-84 and 89(b). The clear and convincing evidence requirement falls between the ordinary civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt". The preponderance standard means simply that when the record is considered as a whole the credible evidence renders the existence of the fact in question more likely than not. In contrast, the familiar criminal standard means that the trier of fact must not have a reasonable doubt, that is, one based on the evidence or the lack of evidence. A reasonable doubt is one which has some justification rather than an imaginary or possible doubt. The clear and convincing standard is much higher than the preponderance standard but somewhat less than the reasonable doubt requirement. Clear and convincing evidence should produce in the mind of the Commissioner a firm belief or conviction as to the truth of the matters sought to be established. In order to sustain its burden, the applicant was obliged to present clear and convincing proof of the facts upon which the Commission may reach a reasonable conclusion as to suitability. [Emphasis added.]

The different "burdens of proof" applicable in this State are set forth in Evid. R 1(4) and are discussed in Lepre v. Caputo, 131 N.J. Super. 118, 123-24 (Law Div. 1974)

> Evid. R.:1(4) sets forth three standards of proofs: namely, preponderance of the evidence, clear and convincing proof and beyond a reasonable doubt. Comment 1(4)-4 provides that:
>
> > The third standard, clear and convincing evidence, falls somewhere between the ordinary civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. * * * It should produce in the mind of the trier of the fact a firm belief or conviction as to the truth of the allegations sought to be established.

This principle was enunciated in Aiello v. Knoll Golf Club, 64 N.J. Super. 156 (App. Div. 1960), where the clear and convincing standard of proof was applied in establishing plaintiff's burden of proving an alleged parol gift of land. The language adopted in Aiello of an earlier Iowa case, Bevington v. Bevington, 133 Iowa 351, 358, 110 N.W. 840, 843, 9 L.R.A., N.S. 508 (Sup. Ct. 1907), describes

appropriately this additional burden placed upon a proponent in clear and convincing situations:

> The law requires nothing more than that the result shall not be reached by a mere balancing of doubts or probabilities, but by clear and unequivocal proof of facts upon which a Court or jury may reach a reasonable satisfactory conclusion. In other words the rule does not require absolute certainty, but reasonable certainty of the truth of the ultimate fact in controversy.

See also, Germann v. Matriss, 104 N.J. Super. 466, 470 (App. Div. 1969). The evidence must be "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 at 162. Evidence may be uncontroverted, but yet not clear and convincing. See, Matter of Jobes, 108 N.J. 394, 408 (1987). While I do not believe that the petitioner's licensure as an electronics technician would threaten the casino industry, if measured by a preponderance of the evidence standard, I do not believe that the petitioner has met his burden of affirmatively establishing his rehabilitation by clear and convincing evidence.

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

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Strouse was required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the

regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is not readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. While the misconduct did not involve casino employment, the petitioner was involved in three separate incidents over a four-year period. Two of these incidents resulted in incarceration. The underlying circumstances did, however, somewhat mitigate the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for his assaultive misconduct, however, he has not fully accepted responsibility for or indicated appreciation of the severity of his drug misconduct. The petitioner still attempts to minimize the severity of his offense. The petitioner now appears to have regained control over his behavior, performed admirably within the casino industry for two years, and has become a respected member of his community serving as a volunteer fireman. Accordingly, while the petitioner appears to now be a good person and does not appear to be a threat to the casino industry by serving as an electronics technician, I cannot clearly and convincingly state that the petitioner presents no risk to the public nor to the integrity of the gaming industry in this State. The petitioner has not earned the privilege of licensure. He is still on probation. An examination of the whole person does not clearly and convincingly establish that Mr. Strouse is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Jeffrey L. Strouse for the issuance of a casino employee license be **DENIED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 15, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

8/16/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 17 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

cad

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DOCUMENTS IN EVIDENCE

For the Petitioner:

None

For the Respondent:

R-1 Personal History Disclosure Form - 2A, dated January 25, 1988

R-2 Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment No. 88-12-3082-C

R-3 Judgment of Conviction and Order for Commitment, dated March 17, 1989

WITNESSES

For the Petitioner:

Jeffrey L. Strouse, the petitioner

For the Respondent:

Jeffrey L. Strouse, the petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-92
APPLICATION NO. 076986-22
REGISTRATION NO. 020044-40
OAL DOCKET NO. CCC 09491-89
ORDER NO. 90-49-6

APPLICATION OF LONNIE TAYLOR
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of December 12, 1990,

IT IS on this 20th day of December 1990, ORDERED that the initial decision is adopted; 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

IT IS FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining 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 this denial shall not affect Lonnie Taylor's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 9491-89
AGENCY DKT. NO. 90-EA-92

LONNIE TAYLOR,
Petitioner,
v.
STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

Jerry C. Goldhagen, Esq., for the petitioner

Norma L. Stancil, Deputy Attorney General, for the respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: **September 18, 1990** Decided: October 31, 1990

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

This matter concerns the letter filed with the Casino Control Commission (Commission) on August 4, 1989, objecting to the issuance of a casino employee license to the petitioner, Lonnie Taylor. The petitioner requested a hearing, and the matter was transmitted on December 13, 1989, 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 telephone prehearing conference was held on April 27, 1990, at which time the parties agreed that the issues in this matter are:

A. Whether the petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State as permitted by N.J.S.A. 5:12-86g, to wit: Theft by deception (third-degree offense), pursuant to N.J.S.A. 2C:20-4.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

C. Whether the petitioner can demonstrate rehabilitation, pursuant to N.J.S.A. 5:12-90h.

At the prehearing conference, Mr. Taylor appeared pro se and the respondent, the Division of Gaming Enforcement (Division), was represented by Deputy Attorney General James Armstrong. At that time, it was decided that the hearing in this matter would be held on July 5, 1990. This hearing date was adjourned at the request of the petitioner after he acquired the services of an attorney, Jerry C. Goldhagen, Esq. The hearing was rescheduled and took place on August 23, 1990, at the Absecon City Hall in Absecon, New Jersey. At the hearing, the respondent was represented by Deputy Attorney General Norma L. Stancil. After receipt of additional documents from the petitioner, as well as briefs from the parties, the record in this matter closed on September 18, 1990.

FACTUAL FINDINGS

I **FIND** that there are no factual disputes in this matter.

During its investigation, the Division determined that a certificate of debt had been filed against the petitioner by the New Jersey Division of Unemployment and Disability Insurance, State Department of Labor (Labor). This certificate of debt is based on the determination by Labor that the petitioner had received unemployment benefits totaling $1,848.75 between March 23, 1982 and June 15, 1982, due to his misrepresentation of his employment status (R-20, R-21, R-22, R-23). With interest and fines, the total amount sought by Labor from the petitioner was

$2,033.65 (R-24), and Mr. Taylor currently owes Labor $1,746.35 (R-5). According to the respondent's investigator, Agent Rita Kazmierski, the petitioner has not made any voluntary payments as to this debt.

Agent Kazmierski stated that Mr. Taylor had been working at Resorts International Casino Hotel (Resorts) when he was collecting the unemployment benefits in 1982.

Additionally, the Division determined that Mr. Taylor had a student loan debt of $2,550.00 and he currently owes $1,944.00 on this debt (R-18, R-19). The last payment on this debt was made by withholding petitioner's income tax refund on May 19, 1988 (R-18, R-19). Also, Mr. Taylor is in default on a $2,193.28 loan debt he owes to the First Fidelity Bank, and he has an overdue account at Annie Sez (R-18).

In addition, during its investigation, the respondent determined that the petitioner has the following criminal record:

(1) On July 18, 1981, the petitioner was arrested for the possession of a controlled dangerous substance, a violation of N.J.S.A. 2C:35-10, while he was confined at Leesburg State Prison (R-1, R-3, R-17). This charge was later administratively dismissed (R-2).

(2) On October 24, 1981, the petitioner was arrested for the possession of a controlled dangerous substance, a violation of N.J.S.A. 2C:35-10 (R-4, R-17).

(3) On September 21, 1982, the petitioner was arrested for having a number of different controlled dangerous substances in his possession. He was charged with the possession of heroin, valium and marijuana, a violation of N.J.S.A. 2C:35-10 (R-5, R-6, R-17). Initially, the petitioner was given a conditional discharge regarding this matter provided that he was examined for narcotics every three months for a one-year period (R-7) The conditional discharge was revoked due to the petitioner's failure to comply with the conditions of the discharge, and the petitioner pled guilty to one charge of the possession of a controlled dangerous substance. He was placed on probation for 18 months and he was required to pay a fine of $150.00, serve 100 hours of community service,

and pay a penalty of $25.00 to the Violent Crimes Compensation Board (R-7).

(4) On May 25, 1983, the petitioner was arrested for theft, a violation of N.J.S.A. 2C:20-6 (R-8, R-17). In the complaint, it was alleged that the petitioner had in his possession an electric typewriter valued at $399.99 taken from Sears and Roebuck Company (R-9, R-10). Mr. Taylor pled guilty to the offense of theft by receiving stolen property, a violation of N.J.S.A. 2C:20-7, and he was placed on probation for one year. He was also required to perform 100 hours of community services and to pay a penalty of $25.00 to the Violent Crimes Compensation Board (R-11). Mr. Taylor stated that he did not know the typewriter was stolen and that he pled guilty to protect his older brother.

(5) On March 25, 1987, Mr. Taylor was arrested for simple assault and terroristic threats, a violation of N.J.S.A. 2C:12-1(a)1 and 2C:12-3 (R-12, R-17). In this matter, the complainant alleged that Mr. Taylor had chased him with his car and then with a table leg and had tried to do him bodily harm (R-13, R-14). According to Mr. Taylor, the complainant had had an argument with his sister and had hit her. Mr. Taylor found out and went after the complainant. This matter was dismissed (R-14, R-15).

(6) On January 23, 1989, Mr. Taylor was arrested for an assault, a violation of N.J.S.A. 2C:12-1(a). According to Mr. Taylor, this was a domestic matter involving his wife, and the complaint was dismissed.

Mr. Taylor did not list any of the above arrests and convictions in his personal history disclosure form - 2A (PHD form) (R-26), which he filed as part of his application for a casino employee license.

After the matter was assigned to Agent Kazmierski for investigation, she tried to contact Mr. Taylor by telephone several times without success. Agent Kazmierski then sent Mr. Taylor a registered letter, dated on March 29, 1989, asking him to contact the employee license section and indicating that his failure to comply with the request would delay the background investigation relating to his application for a casino employee license (R-27). Mr. Taylor received this letter and the Division received a return receipt with his signature (R-27); however, Mr. Taylor did not contact the Division.

On his own behalf, Mr. Taylor stated that he had submitted the PHD form as part of his application for a casino employee license (R-26) and that he had received the letter from the Division. According to Mr. Taylor, he was very busy at the time he got the letter, since he was moving, and he never really read the contents of the letter.

Mr. Taylor admitted that he did not reveal his arrest record in the PHD form since he felt that the criminal matters occurred a long time ago and were minor incidents. He also admitted that when he filled out the PHD form, he had been concerned that his criminal record might have a negative impact on his chances of getting a casino employee license.

Mr. Taylor stated that he is now 28 years old, married, and has three children, ages 9, 4 and 3 years old. Mr. Taylor is a high-school graduate. Mr. Taylor took carpentry courses while in high school, and he completed a six-month course for data processing in 1984 (in the PHD form, this course is improperly listed as having been taken in 1974). After he completed the data processing course, he was unable to get a job as a data processor because he had no work experience.

As to receiving the unemployment compensation benefits in 1982, Mr. Taylor admitted that he was working at Resorts at the time and indicated that he did not report the employment since he needed the money. At that time, Mr. Taylor stated that he was young and he was supporting a wife and an infant son. He was also using drugs in 1981-82 and was being influenced by an older brother who has a long and serious criminal record. According to Mr. Taylor, he has not made any voluntary repayment of the amount he owes Labor because he does not have the money. Mr. Taylor stated that he has not repaid his student loan and other debts for the same reason.

Mr. Taylor is currently employed at the Claridge Hotel and Casino (Claridge) as a barporter. Prior to this employment, he has had a number of other jobs in the casino industry. Mr. Taylor holds a casino hotel employee registration.

For a while, Mr. Taylor was employed as a busperson by the Trump Castle Hotel and Casino (Trump) and he worked there approximately five months during 1989. In 1989, the petitioner also worked at the Claridge. He was terminated by the Claridge. The petitioner stated that he was working for both the Claridge and the Trump at

the same time, and it was too hard to work at both places. Mr. Taylor worked for approximately eight months for the Showboat Hotel and Casino in 1988, and he was discharged for unauthorized absenteeism. Prior to that time, he was employed as a car cleaner for a limousine company for approximately six months in 1987. In 1982, he worked for a time for Resorts but was laid off from the position.

Mr. Taylor was taking drugs when he was 19 to 20 years old; however, he stated that he no longer takes drugs. Mr. Taylor stated that his older brother was a bad influence on him and that he now does not associate with this brother and will not allow this brother to involve him in any criminal activities.

According to Mr. Taylor, he wants the casino hotel employee license so that he can get a better position in the casino industry. If he gets a better position, he will be able to pay his debts.

On behalf of the petitioner, three persons submitted letters attesting to his good character, honesty and integrity. The letters are from George Taylor, Jr., an Atlantic City Police Officer and one of the petitioner's brothers. Cornell Taylor, the petitioner's mother, and Izra Jones, a close friend of the petitioner. All three persons stated that the petitioner is a good person, who is now working very hard to support his wife and children (P-1, P-2, P-3).

CONCLUSIONS OF LAW

On behalf of the petitioner, Mr. Goldhagen argued that Mr. Taylor is now a mature person who takes his family responsibilities seriously. Mr. Goldhagen argued that the petitioner's criminal activities occurred some time ago, and even though Mr. Taylor did not list the criminal charges in his application, he candidly admitted them during the hearing. Additionally, Mr. Goldhagen stated that Mr. Taylor had financial problems during 1982, and he had improperly accepted unemployment benefits because he had a urgent need for the money to support his wife and child. Mr. Goldhagen argued that the petitioner has shown his rehabilitation and that he is now a person of good character, honesty and integrity. Mr. Goldhagen noted that Mr. Taylor's last criminal conviction was almost eight years ago.

In addition, Mr. Goldhagen argued that even if there is a finding that Mr. Taylor has not been rehabilitated, the Commission should waive this disqualification pursuant to N.J.S.A. 5:12-91e, and he cited the case of The Division of Gaming Enforcement v. Crumble, 12 N.J.A.R. 191 (1989). I disagree with Mr. Goldhagen as to

the application of N.J.S.A. 5:12-91e. By law, the waiver provision is only applicable to cases involving a casino hotel employee registration.

In her brief, Ms. Stancil argued that the petitioner admitted that he had received unemployment benefits in 1982 by misrepresenting his employment status, and she argued that this action is equivalent to theft by deception, a third-degree offense, pursuant to N.J.S.A 2C:20-4, and that this action constitutes a disqualification, pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g.

Although the Division had not alleged in its letter that petitioner should be disqualified based on his failure to reveal his criminal record, pursuant to N.J.S.A. 5:12-86b, Ms. Stancil argued that this fact and the petitioner's criminal record should be taken into consideration in determining whether or not he is a person of good character, honesty and integrity as required for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) and N.J.S.A. 5:12-90b.

Further, Ms. Stancil requested pursuant to N.J.A.C. 1:1-14.1 and N.J.A.C. 1:1-6.1, that I amend the prehearing order to add the issue of disqualification pursuant to N.J.S.A. 5:12-86b, in view of the petitioner's admission that he intentionally failed to disclose his criminal record. In support of her request, Ms. Stancil noted that the petitioner had not cooperated with the Division's investigation by not responding to the Division's letter. If the petitioner had responded, Agent Kazmierski would have discussed the failure to reveal his criminal record on the PHD form with the petitioner prior to the preparation of the Division's letter to the Commission. I **CONCLUDE** that the Division's request to amend its August 1989 letter and the prehearing order to add the issue of a disqualification pursuant to N.J.S.A. 5:12-86b is denied since it was first raised by Ms. Stancil after the hearing in the matter. Although N.J.S.A. 1:1-6.2 provides the administrative law judge with liberal latitude to amend the pleadings, this power is usually exercised before the actual hearing and is not allowed when it would be prejudicial to either party. To add a new ground for the denial of the petitioner's application for a casino employee license at this junction would deny the petitioner the opportunity to submit a defense and, therefore, must be denied.

After considering all the evidence presented at the hearing, I **CONCLUDE** that the Division has established a statutory disqualifier since the petitioner intentionally misrepresented his employment status in order to receive unemployment benefits, and I **CONCLUDE** that his action is analogous to theft by deception in excess of

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$500.00, a violation of N.J.S.A. 2C:20-4, which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g.

As to rehabilitation, I **CONCLUDE** that the petitioner has not shown rehabilitation at this time. The receipt of unemployment benefits is not the petitioner's only criminal offense. Additionally, Mr. Taylor has made no attempt to repay any of his debts. Further, as stated by Administrative Law Judge Masin in Thomas v. Division of Gaming Enforcement, OAL DKT. NO. CCC 4401-89 (February 7, 1990), adopted by Commission, March 23, 1990, the fact that he was working for the casino industry while collecting the unemployment benefits "does not reflect well upon the casino industry or its employees." Id. at 4.

Although I recognize that Mr. Taylor was a young man when he committed the acts which resulted in the criminal convictions, in view of the number of convictions, the 1982 improper receipt of unemployment benefits and Mr. Taylor's failure to take any positive action to repay the debt, I **CONCLUDE** that the petitioner has not presented sufficient evidence to show by clear and convincing evidence his rehabilitation or to show his good character, honesty and integrity.

In reaching this conclusion, I have also taken into consideration that Mr. Taylor appears not to be able to hold a position for any extended period of time and the fact that he intentionally withheld information regarding his criminal record on his PHD form.

Therefore, I **ORDER** that the application of the petitioner for a casino employee license be **DENIED**.

I hereby **FILE** my initial decision with the **CASINO CONTROL COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is authorized to make a final decision in this matter. If the Casino Control Commission does not adopt, modify or reject this decision within 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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Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHAIR OF THE CASINO CONTROL COMMISSION, 3131 Princeton Pike, Building 5, CN 208, Trenton, New Jersey 08625**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 31, 1990
Date

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

11/1/90
Date

Sally Johnson
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 08 1990
Date

Jaynee LaVecchia
OFFICE OF ADMINISTRATIVE LAW

cad

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EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

P-1 Letter from George Taylor, Jr., dated August 31, 1990

P-2 Letter from Cornell Taylor, dated August 25, 1990

P-3 Letter from Ezra Jones, dated August 21, 1990

For the Respondent:

R-1 New Jersey State Police Investigation Report regarding the arrest of Lonnie J. Taylor, dated July 18, 1981, and a supplemental investigation report, dated October 16, 1981

R-2 Supplemental Investigation Report of the New Jersey State Police dealing with the arrest of Lonnie J. Taylor, dated March 30, 1982

R-3 Arrest report regarding Lonnie J. Taylor, dated July 8, 1981

R-4 Atlantic City criminal record for Lonnie J. Taylor

R-5 Atlantic City Police Department Investigation Report regarding Lonnie J Taylor, dated September 21, 1982

R-6 Atlantic City Arrest Report regarding Lonnie J. Taylor, dated September 21, 1982

R-7 Atlantic County Superior Court Criminal Record regarding a possession of controlled dangerous substance charge filed against Lonnie J. Taylor

R-8 Egg Harbor Township Police Department Investigation Report regarding the arrest of Lonnie J. Taylor, dated May 25, 1983

R-9 Complaint filed against Lonnie J. Taylor, dated May 25, 1983

R-10 Egg Harbor Township Investigation Report regarding the arrest of Lonnie J. Taylor, dated May 25, 1983 and a supplemental report dated May 26, 1983

R-11 Atlantic County Superior Court Criminal Record relating to a theft by receiving stolen property charge filed against Lonnie J. Taylor

R-12 Atlantic County Police Department Arrest Report relating to Lonnie J. Taylor, dated March 25, 1987

R-13 Atlantic City Police Department Investigation Report relating to the arrest of Lonnie J. Taylor, dated March 22, 1987

R-14 Complaint filed against Lonnie J. Taylor, dated March 22, 1987, with notations as to the disposition on the charge

R-15 Complaint filed against Lonnie J. Taylor, dated March 22, 1987, with notations as to the disposition on the charge

R-16 Atlantic City Police Department Investigation Report relating to the arrest of Lonnie J. Taylor, dated January 23, 1989

R-17 Federal Bureau of Investigation Police Report relating to Lonnie J. Taylor, dated May 26, 1988

R-18 Credit check regarding Lonnie J. Taylor

R-19 Computer-generated report as to the amount of money owed by Lonnie J. Taylor on his student loan

R-20 Letter written by Lonnie J. Taylor, dated October 1, 1984

R-21 Notice of Hearing sent to Lonnie J. Taylor, dated September 18, 1984

R-22 Certificate of Debt filed with the Clerk of the Superior Court by the Division of Unemployment and Disability Insurance of the New Jersey Department of Labor

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R-23 Letter sent to Lonnie J. Taylor by the Division of Unemployment and Disability Insurance, New Jersey Department of Labor, dated April 16, 1985, with an attachment

R-24 Letter from the Division of Unemployment and Disability Insurance, New Jersey Department of Labor, to Lonnie J. Taylor, dated March 12, 1986

R-25 Computer-generated Report regarding the amount owed by Lonnie J. Taylor to the Division of Unemployment and Disability Insurance, New Jersey Department of Labor

R-26 Personal History Disclosure Form - 2A prepared and submitted by Lonnie J. Taylor

R-27 Certified letter sent to Lonnie J. Taylor, dated March 29, 1989, and the return receipt

WITNESSES:

For the Petitioner:

Lonnie J. Taylor

For the Respondent:

Agent Rita Kazmierski

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-255; 89-EA-267
APPLICATION NO. 074622-22
REGISTRATION NO. 046650-40
OAL DOCKET NOS. CCC 1466-89
(CONSOLIDATED 241-89)
ORDER NO. 90-32-6

APPLICATION OF GUY THOMAS
FOR A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

ORDER

v.

GUY THOMAS,

Respondent.

A hearing 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 August 8, 1990,

IT IS on this 14th day of August 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted and the complaint is dismissed substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly /CJD

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 241-89
AGENCY DKT. NO. 89-EA-267
and
OAL DKT. NO. CCC 1466-89
AGENCY DKT. NO. 89-255
(CONSOLIDATED)

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
GUY THOMAS,
Respondent.
and
THE APPLICATION OF GUY THOMAS
FOR A CASINO EMPLOYEE LICENSE,

Charles F. Kimmel, Deputy Attorney General for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Guy Thomas, respondent/applicant appearing pro se

Record Closed: **August 22, 1989** Decided: **July 2, 1990**

BEFORE **RICHARD J. MURPHY,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The New Jersey Department of Law and Public Safety, Division of Gaming Enforcement (Division) has filed a complaint with the Casino Control Commission (Commission) pursuant to N.J.S.A. 5:12-86, 89-91, 107-108, 129-130, seeking to revoke

respondent Guy Thomas' casino employee registration #46650-40, because of his 1986 arrest for aggravated assault, possession of a weapon for unlawful purposes, and possession of a weapon, and guilty plea to aggravated assault. The Division relies on the same grounds to object to Guy Thomas' application for a casino employee license. Thomas is employed by Trump Hotel & Casino as an environmental services worker. He argues mitigating circumstances, as well as rehabilitation from the offense.

Procedural History:

The application matter was filed by the Commission with the Office of Administrative Law (OAL) on January 12, 1989, for hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq., and the revocation proceeding was filed with OAL on March 1, 1989, to be consolidated with the casino employee license application made by Mr. Thomas. The prehearing was held on April 6, 1989 and the plenary hearing was held in Camden on August 22, 1989, at which time the record closed. The due date for submission of this decision was extended on several occasions for matters not relevant to this case, including the backlog of decisions resulting from pending public utility matters. I regret any hardship or inconvenience that this unavoidable delay may have caused the parties.

Issues:

The issues to be resolved are:

(1) Whether the applicant/respondent is disqualified from holding a license/registration under N.J.S.A. 5:12-86c(1), because of conviction for the enumerated offense of aggravated assault;

(2) Whether the applicant/respondent can affirmatively demonstrate his rehabilitation from the disqualifying offense pursuant to N.J.S.A. 5:12-90h, 91d;

(3) Whether the applicant/respondent can establish by clear and convincing evidence his good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2), and 90b, considering the fact as to rehabilitation as set forth in 90h.

FACTUAL DISCUSSION AND FINDINGS

There is no dispute as to the facts. Guy Thomas currently holds a casino hotel employee registration and works in the hotel part of the Trump Hotel & Casino, shampooing rugs and scrubbing floors. He seeks a casino employee license to be able to work on the casino floor in a cleaning capacity. Mr. Thomas does not dispute that, on July 3, 1986, he was indicted for aggravated assault, possession of a weapon for unlawful purposes, and possession of a weapon, and that he pled guilty on August 11, 1986 to aggravated assault and sentenced on October of 1986, to ten months incarceration in the Atlantic County jail (with credit for two days), three years probation, $2,283.76 in restitution and $30 payable to the Violent Crimes Compensation Board. (P-1). Specifically, Mr. Thomas was alleged to have assaulted one Rene Louis and Marie Jasmine. Mr. Thomas claimed that the charges were the result of a fight that he did not start, provoked by Rene Louis' suspicions that Thomas was (to use the colloquial) "putting the moves on his wife, Marie Jasmine, which Thomas emphatically denies. The sentencing Judge noted, as aggravating factors, the risk that the defendant will commit another crime and the need for deterring the defendant from others from violating the law. He also included the following reasons for sentence:

> [c]onsidering the brutal nature of the offense and resultant damage to the victim, and despite defendant's clear prior criminal record, a term of incarceration is necessary since the defendant will pose a danger to the community without some jail; and also for purposes of punishment, as a deterrent, for rehabilitation, and so as to not deprecate the seriousness of the offense. Thereafter the defendant should be amenable to this probation. (P-1) (emphasis added).

The sentencing Judge also noted the following mitigating factors:

> . . . substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense fight . . . .
>
> The defendant has compensated or will compensate the victim of this conduct for the damage or injury that he sustained or will participate in a program of community service
>
> . . . The defendant has no history of prior delinquency or criminal activity and has led a law-abiding life for a substantial period of time before the commission of the present offense
>
> . . . The defendant's conduct was the result of circumstances unlikely to recur

1294

> . . . The character and attitudes of the defendant indicate that he is unlikely to commit another crime or offense
>
> . . . The defendant is particularly likely to respond affirmatively to probationary treatment . . . . (P-1; sentence worksheet) (emphasis added).

The Division also relies on arrest reports prepared by the Atlantic City Police Department, which contain the following statement by the arresting officer:

> . . . both victims [Marie Jasmine and Rene Louis] were in a fight with the accused. [Marie Jasmine] was struck in the face with a fist and [Rene Louis] was stabbed several times in the back and head . . . while the victims and the accused were at the above location [Rene Louis and Marie Jasmine] a domestic dispute ensued victim number 2 [Rene Louis] then get up and told the accused to leave his house. The accused refused and victim number 2 then shoved the accused. Victim number 1 [Marie Jasmine] then attempted to break up the fight and the accused punched her in the face causing two cuts on her face, further one of her teeth were knocked out. Victim number 2 [Louis] then tried to defend his girlfriend and the accused then pulled a knife with two blades and stabbed him repeatedly in the back and head. Both victims were transported to A.C.M.C. were victim number 1 was treated and released while number 2 was admitted for the stab wounds. The weapon was recovered at the scene, further the accused was arrested at the scene also. (P-3) (emphasis added).

Guy Thomas does not dispute that he pled guilty to aggravated assault, but offers the following account of the incident, which is somewhat at odds with the above police report. According to Thomas, the problem started when Rene Louis, who did not have an automobile, asked Thomas, who was a friend of the family, to take his wife to the hospital, which he did. Thomas stated that the wife, Marie Jasmine, always told him of the problems with Louis and also of her boyfriend in New York City, who had bought her a car. Thomas suspects that Ms. Jasmine became concerned that he would tell Louis of her boyfriend in New York. Louis, in turn, accused Thomas of asking Marie Jasmine to a restaurant and called Thomas at home to come over to discuss it. When Thomas arrived Louis was questioning Marie, and then he hit Thomas and grabbed his shirt. Thomas claims that he asked to go, that Rene slapped him three times, Said he would kill him and produced a knife. Thomas (in self-defense) then pulled the knife from Louis and stabbed and cut him several times. Marie Jasmine then grabbed a turkey knife and the applicant stated that "all hell was breaking loose". Rene Louis called the police who shortly arrived and quelled the disturbance. Thomas states that Rene Louis' sister-in-law was also present in the house and could testify that Louis started the fight, but she was reluctant

to testify and as a result Thomas "has nobody to say nothing for him or to take his side". He was represented by a lawyer in the criminal proceeding, but pled guilty because he did, in fact, fight with Rene Louis, although only in self-defense, after having his life threatened. Thomas stated that he did not expect a fight from Rene Louis when he arrived at the house, that Louis shook his hand and said that he had been mad at work. Thomas intended to tell Louis in front of Marie Jasmine and get her to deny that he asked her to a restaurant and thereby smooth things over with Louis. When Rene Louis grabbed his shirt and tried to hold him, Thomas claims that he tried to run but, that when Louis slapped his face several times, Thomas took Louis' knife and first cut him on the hands and then saw Marie Jasmine go to get Louis the second knife, a turkey carving knife. When asked why he pled guilty to aggravated assault in light of his claim of self defense, Thomas, who is Haitian and has only a limited command of the English language, stated that his lawyer advised him to plead guilty under the circumstances. Thomas stated that he was "confused as to the process". In response to the investigative report statement that he repeatedly stabbed Louis in the back and head, he stated that he didn't know how manys time he stabbed Mr. Louis, but that the other woman present (Marie Jasmine and Louis' sister-in-law) came at him and threw objects, and also went to get Louis another knife, after Thomas had taken the first from him.

Thomas, who was 25 at the time of the assault, had no prior or subsequent criminal record beyond his conviction for aggravated assault. He has paid $800 of the soom $2300 in restitution, consisting mostly of hospital bills, incurred by Louis as a result of the stabbing. Thomas states that he doesn't use alcohol or drugs and "doesn't feel like hurting somebody". While incarcerated, he states that he took a mechanics course, and attended church, as well as AA meetings (not because of alcoholism, but just to listen). In the community, he has helped build his brother-in-law's house.

He has worked at Trump Castle for two years, shampooing rugs, waxing and buffing floors and the like, and the manager of environmental services at Trump Castle, Michael March, states that he is a good worker and an asset to the department. (R-1).

In his application for employment at the Castle, he disclosed that he had been convicted of the offense of "fighting", but did not mention aggravated assault, or the charge of possession of an unlawful weapon. He claims that he put in the word "fighting" because he didn't know how to write anything else. He was born in Haiti, has lived in the United States for six and one-half years, and has learned English here, but doesn't write

English well. He was assisted at the hearing by a James Williams, a Trump supervisor. Mr. Williams testified that, although Thomas' English was "bad," he is "always working" and has had no problems on the job.

As to his application for a casino license, Thomas states that he wants to "be something" and hopes to get a non-gaming license to clean on the casino floor. He states that after the altercation with Rene Louis and Marie Jasmine, who were once friends of his, he "only works and eats" and "has no more friends". But he does like the casino industry and wants to stay in it.

LEGAL DISCUSSION AND CONCLUSIONS

As to disqualification, the Division argues and the respondent/applicant does not dispute that he pled guilty to the enumerated disqualifying offense of aggravated assault in August of 1986 and I **CONCLUDE** that he is disqualified on that basis pursuant to N.J.S.A. 5:12-86c(1).

Once disqualified, the respondent/applicant has the burden of affirmatively showing rehabilitation under N.J.S.A. 5:12-91(d), as to the registration:

> [i]n determining whether the registrant has affirmatively demonstrated his rehabilitation the Commissioner shall consider the following factor:
>
> (1) The nature and duties of the registrant's position;
>
> (2) The nature and seriousness of the offense or conduct;
>
> (3) The circumstances under which the offense or conduct occurred;
>
> (4) The date of the offense or conduct;
>
> (5) The age of the registrant when the offense or conduct was committed;
>
> (6) Whether the offense or conduct was an isolated or repeated incident;
>
> (7) Any social conditions which may have contributed to the offense or conduct;

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

The factors of rehabilitation also bear on applicants for casino employee licenses who are disqualified, as set forth in N.J.S.A. 5:12-90 which closely parallels the rehabilitation factors of 91h. The question of rehabilitation is thus relevant both to the issue of disqualification and that of good character, honesty and integrity, the latter of which the applicant must establish by clear and convincing evidence. See, Dunston v. Division of Gaming Enforcement, App. Div. decided April 10, 1990, A-197-89T3.

In applying the factors of rehabilitation both to Mr. Thomas' registration and application for casino employee license, I note that the duties of the position held under the registration and the one sought by the application are both essentially cleaning (or environmental services) and are of a non-gaming nature, involving no contact with patrons. (Factor 1). The offense of aggravated assault to which Thomas pled guilty, is a serious and enumerated disqualifier under N.J.S.A. 5:12-86c1 and involved serious bodily injury, at least as to Rene Louis, in the form of multiple stab wounds. (Factor 2). The circumstances under which the offense occurred, are, however, somewhat mitigating and I FIND credible the applicant/respondent's claim that he did not start the fight with Rene Louis and also feared for his life. Although the dispute between Thomas and Louis was not the result of a domestic dispute between Louis and Marie Jasmine, it is evident that the applicant/respondent became embroiled in the couple's affairs, and was suspected of pursuing Ms. Jasmine, which he emphatically denies. Although I agree with the sentencing judge that Mr. Thomas' claim did not establish the defense of self-defense in the criminal context, I found Thomas' testimony believable as to his intent to defend himself from Rene Louis' jealous rage. Thomas was also justifiably concerned for his safety by virtue of the fact that Marie Jasmine went to get a carving knife, after Thomas removed the first knife from Louis' hand, and put it to violent use, on Louis. The circumstances, though serious, are mitigated to the extent that Thomas became embroiled in a situation exacerbated by explosive emotions of jealous and feelings of suspicion, and had some reasonable basis to fear for his life. (Factor 3). Thomas, who was 25 years of age at the time of the 1986 offense, had no previous or subsequent criminal record, and

his conduct was an isolated and not repeated incident. (Factors 4 through 6). He cites no social conditions contributing to the offense and the record reflects none. (Factor 7). As to evidence of rehabilitation, he claims good conduct in prison, as well as successful compliance with probation, and continued good conduct on the job. He presents recommendations of supervisors who attest to his good work record in the casino industry, within which Mr. Thomas seeks to stay and progress (Factor 8).

Considering all of the above factors, I **CONCLUDE** that Guy Thomas has shown rehabilitation under N.J.S.A. 5:12-91d from the otherwise disqualifying offense of aggravated assault. I further **CONCLUDE** that has established his good character, honesty and integrity by clear and convincing evidence pursuant to N.J.S.A. 5:12-89b(2), 90b, considering all the circumstances of this offense, the absence of any other criminal record, his good work record in the casino industry and all are true factors of rehabilitation under 90h. As the sentencing judge noted, the circumstances that led to the aggravated assault are not likely, to recur and Mr. Thomas does not appear to me to present any danger to casino patrons or hotel guests. I recommend that he be allowed to retain his registration and that he be granted a casino employee license. See, Dunston.

DISPOSITION

On the basis of the above findings of fact and conclusions of law it is **ORDERED** that the Division's complaint seeking to revoke Guy Thomas' casino hotel employee registration is **DISMISSED** and that his application for casino employee license is **GRANTED.**

This recommended decision may be adopted, 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 2, 1990
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

7/3/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 10 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

For the petitioner:

P-1 Original Indictment statement, dated July 3, 1986 (13 pages)

P-2 Personal History Disclosure Form-2A, dated November 4, 1987 (20 pages)

P-3 Atlantic City Police Dept. Arrest Report, dated 6/3/86 (4 pages)

For the respondent/applicant:

R-1 Letter from Michael March, Manager, Environmental Services, at Trump Castle Hotel and Casino attesting to Guy Thomas' good character, etc., dated August 21, 1989

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-190
APPLICATION NO. 080107-22
OAL DOCKET NO. CCC 09487-89
ORDER NO. 90-37-14

APPLICATION OF NORMAN J. THOMPSON
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing 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 September 19, 1990,

IT IS on this 20th day of September 1990, ORDERED that the initial decision is modified as follows:

1. The ALJ's finding that the applicant's conviction for malicious shooting into an occupied dwelling is equivalent to the disqualifying offense of burglary, second degree pursuant to section 86(c)(1) of the Casino Control Act is rejected. An essential element of burglary is the illegal entry. This element is notably absent from a conviction for malicious shooting. The basis for disqualification of the applicant under section 86(c)(1) is his 1984 conviction for breaking and entering while armed which is analogous to burglary, second degree;

2. Rehabilitation of an applicant for a casino employee license is governed by section 90(h) of the Casino Control Act, not 91(d) as suggested by the ALJ; and

3. The ALJ's recommended disposition that the applicant be permitted to retain his casino hotel employee registration and his casino employee license is rejected as incorrect. This is an application case, not a revocation proceeding. The Division has not initiated a proceeding seeking the revocation of Mr. Thompson's casino hotel employee registration and therefore no issue concerning that credential is before the Commission. The correct disposition of this case is to grant the application of Norman J. Thompson for a casino employee license.

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 09487-89
AGENCY DKT. NO. 90-EA-190

NORMAN THOMPSON,
Petitioner,

vs.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Respondent.

NORMAN THOMPSON, petitioner, pro se

MITCHELL A. SCHWEFEL, Assistant Attorney General for respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: JUNE 22, 1990 Decided: JULY 17, 1990

BEFORE **JOSEPH E. KANE, ALJ:**

OAL DKT. NO. CCC-09487-89

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) objecting to the issuance of a license to the petitioner, Norman Thompson. The Division alleges, among other things, that petitioner while residing in the State of Virginia committed an offense equivalent to that of N.J.S.A. 2C:18-2 (burglary) which constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1). The Division further alleges that as a result of said offense, petitioner lacks the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(1).

PROCEDURAL HISTORY

The Division filed its letter of objection with the Commission on October 25, 1989. Petitioner requested a hearing on December 4, 1989 and on December 6, 1989 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on March 26, 1990 by Jeff S. Masin, ALJ followed by a hearing which was held on June 14, 1990. The record was closed on June 22, 1990.

ISSUES

A. Did Mr. Thompson engage in conduct in the State of Virginia which resulted in a conviction for a crime comparable to the New Jersey crime of burglary, N.J.S.A. 2C:18-2 a crime of the second degree: If he

was convicted of this offense, does this automatically disqualify him from licensure pursuant to N.J.S.A. 5:12-86c(1)?

B. If Mr. Thompson would be automatically disqualified, does the evidence presented by him establish that he has rehabilitated himself from the prior conduct so as to be permitted to obtain a license, pursuant to N.J.S.A. 5:12-90(h)?

C. Does Mr. Thompson possess the requisite good character, honesty and integrity for licensure pursuant to N.J.S.A. 5:89-b(1)?

UNCONTESTED FACTS

Based upon testimony and documents proffered at the hearing the following facts are neither contested nor in dispute. Therefore, these uncontested facts are hereby adopted as **FINDINGS OF FACT** in this matter.

Petitioner is a 30 year old male, married with two children. He is currently employed in the casino industry. At the hearing, petitioner freely stipulated and agreed that he had committed the offenses listed in his criminal history record. Agent Bruce Cooke noted that when he reviewed the petitioner's Personal History Disclosure Form petitioner had answered "yes" to question number 16. Question number 16 of the Personal History Disclosure Form asks whether the applicant has ever been arrested. To this question, petitioner answered in the affirmative. Petitioner did not, however, complete the portion

of the form which requests that the crime or offense be described. Agent Cooke testified that petitioner was most cooperative with him in describing the nature of the offense including his period of incarceration. When questioned by Agent Cooke as to why the description of the crime had not been completed, petitioner answered that he did not believe that it was necessry to fully describe the offense since it had occurred over five years ago.

On December 7, 1983 petitioner was found guilty in the Juvenile & Domestic Relations Court of Pittsylvania County, Virginia. He received a 90 day jail sentence of which 60 days was suspended. This incident was a result of a domestic dispute between petitioner and his wife. On July 20, 1984 petitioner was found guilty in the Circuit Court of Pittsylvania County, Virginia of breaking and entering while armed with a deadly weapon with the intent to commit assault on which charge the imposition of sentence was withheld for 20 years from the date of the sentence on the conditon of Mr. Thompson's peace and behaviour during that period of time. Also on July 20, 1984 Mr. Thompson was found guilty of malicious shooting into an occupied dwelling and was sentenced to seven years to be served in the Virginia State Penitentiary. It is this charge of malicious shooting into an occupied dwelling that the State now contends is analogous to the crime of burglary set forth in the New Jersey State Criminal Code, N.J.S.A. 2C:18-2.

The incident, which petitioner indicated he would regret for the rest of his life, began on the evening of November 22, 1983. At that time, Mr. and Mrs. Thompson had an argument which resulted in her leaving the house with their nine month old child

to seek refuge at her parents' home. Petitioner then began drinking with some friends. The drinking episode, which was the catalyst for his subsequent behaviour, consisted of petitioner and his friends consuming "a case of beer, a bottle of liquor, some wine" and then indulging in "marijuana and cocaine". Some four hours later, he drove his vehicle to his in-laws' home where he requested to see his wife and child. When he was denied entrance, petitioner returned to his vehicle at which time he backed his vehicle up the street for some distance and proceeded to aim it at his in-laws' residence. With wheels spinning he then accelerated from between 30 to 50 miles per hour, driving at least half of the vehicle into the front living room of the one story dwelling. Then, without leaving his vehicle, he pulled an unlicensed 22 caliber automatic pistol from the glove compartment and began shooting randomly through the vehicle into the home. He estimates that he fired six shots in all. None of the residents of the dwelling were visible to petitioner during the shooting episode. Petitioner then remained in his vehicle until the police came, at which time he was taken away in an ambulance with minor injuries.

On July 20, 1984 petitioner was sentenced to serve seven years in the Virginia State Penitentiary for malicious shooting in an occupied dwelling in violation of Section 18.2-279 of the Code of Virginia. Petitioner served 18 months of the seven year sentence during which time he was never disciplined by prison authorities.

Although attending religious services on an infrequent basis prior to entering prison, petitioner's participation in religious services and counselling increased while in prison.

Within one month of his entry into the penal system he became an assistant to the Chaplan. He described these duties as assisting with the religious services several times per week including counselling his fellow inmates. He competed a "disciples" course and began ministering to his fellow prisoners on an ever increasing basis, especially after the Chaplan left.

Petitioner possessed a high school diploma at the time he entered prison and did not further his education because of a lack of courses within the facility. As a result of his good behavior while incarcerated petitioner qualified for an early release program and was released to his home town of Danville, Virginia at which time he was enrolled in a mandatory drug rehabilitation program. Petitioner attended every meeting and received an early release from this program.

While living in Danville, petitioner reconciled with his wife who had been visiting him regularly while he was in prison. Petitioner then moved to Atlanta, Georgia where he worked two jobs; that of a maintenance man in an apartment complex and in a part-time cleaning service. After six months, petitioner felt financially established and his wife and child joined him in Atlanta.

Shortly after moving to New Jersey, petitioner received his hotel registration #90825-40 in the position of public area porter. He was issued casino employee license #80107-22 on January 18, 1989. Petitioner described his work career with the casino as having started sweeping floors and working up to the point where he is now, entering data onto player's club cards at Showboat Hotel and Casino. He has been employed by Showboat since December 22, 1988. While working in the casino industry,

petitioner attended Associated Business Careers for a degree in the field of computers. He intends to enroll in Stockton State College in the fall of 1990 to obtain a two year associates degree as a computer technician. He stated that he enjoys the work which he is currently doing with computers and hopes to pursue a career in the field of computer technology.

Since July 20, 1984 petitioner has not been arrested or convicted of any offense. He has no traffic offenses on record and has not received any notices of discipline from his employer, Showboat Hotel and Casino. Since their reconciliation and petitioner's release from prison petitioner has been happily married and now supports his wife and two children. Petitioner, prior to the November 22, 1983 incident, described himself as a recreational drug user. Since the November 22, 1983 incident he has abstained from the use of controlled dangerous substances.

DISCUSSIONS AND CONCLUSIONS

Pursuant to N.J.S.A. 5:12-1b(8) it is established 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 sanctions against the license 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 petitioner's July 20, 1984 conviction for malicious shooting in an occupied dwelling is the equivalent of burglary under the New Jersey Criminal Code, N.J.S.A. 2C:18-2 and thus, a disqualifying offense pursuant to

N.J.S.A. 5:12-86c(1). Section 86c(1) of the Act sets forth the offenses under the New Jersey Code of Criminal Justice which, if committed, constitutes per se disqualifying offenses, those involving burglary which constitutes a crime of the second degree under N.J.S.A. 2C:18-2.

> Burglary is defined in the New Jersey Criminal Code as:
> "A person is guilty of burglary if, with purpose to commit an offense therein he: (1) enters a structure or a separately secured or occupied portion thereof, unless the structure was at the time open to the public or the actor is licensed or privileged to enter; or (2) surreptitiously remains in a structure or a seperately secured or occupied portion thereof knowing that he is not licensed or privileged to do so.
> ...Burglary is a crime of the second degree if in the course of committing the offense, the actor: (1) purposely, knowingly or recklessly inflicts, attempts to inflict or threatens to inflict bodily injury on anyone; or (2) is armed with or displays what appears to be explosives or a deadly weapon..." N.J.S.A. 2C:18-2.

The applicable Virginia State Code sections to which petitioner was found guilty on July 20, 1984 state:

> Section 18.2-92 - Breaking and entering dwelling house with intent to commit assault or other misdemeanor.
> "If any person break and enter a dwelling house while said dwelling is occupied either in the day or nighttime with the intent to commit assault or any other misdemeanor except trespass, he shall be guilty of a class six felony provided, however, that if such person was armed with a

deadly weapon at the time of such injury he shall be guilty of a class two felony."

Section 18.2-279 - Discharging firearms or missles within or at occupied buildings.

"If any person maliciously discharges a firearm within any building when occupied by one or more persons in such a manner as to endanger the life or lives of such person or persons or maliciously shoot at or maliciously throw any missle at or against any dwelling house or other building when occupied by one or more persons may be put in peril, the person so offending shall be guilty of a class four felony".

I CONCLUDE that the facts as set forth above if committed in the State of New Jersey would constitute the crime of burglary, N.J.S.A. 2C:18-2. **I FURTHER CONCLUDE** that the offense to which petitioner was found guilty on July 20, 1984, the crime of malicious shooting in an occupied dwelling, Section 18.2-279 of the Code of Virginia is analagous to the crime of burglary and thus a statutory disqualifier pursuant to 86c(1) of the Act.

An individual faced with the existence of a section 86c(1) statutory disqualifer may, nevertheless, overcome the prohibition against licensure by affirmatively demonstrating his rehabilitation by clear and convincing evidence. This can be accomplished utilizing the elements set forth in N.J.S.A. 5:12-91(d). The specific eight factors in 91(d) of the Act 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 (licensee) 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 recommendation of persons who have or have had the applicant (licensee) under their supervision.

Considering petitioner's claim of rehabilitation I FIND that petitioner has demonstrated by clear and convincing evidence his rehabilitation for the reasons set forth below:

During the entire course of the hearing I found petitioner to be polite and respectful, not only of this tribunal but also of the Assistant Attorney General assigned to handle the matter. It was very apparent during petitioner's testimony that he is greatly embarrased and remorseful for his conduct. While describing the November 22, 1983 incident, it was necessary to adjourn the proceedings because petitioner began to sob uncontrollably. At the time of the incident petitioner was 21 years old and except for the assault charge to which he was found guilty on December 7, 1983 he had never been in trouble with the law. He attributes the incident to "craziness, jealousy and

stupidity" and he is very much aware of the part that drugs and alcohol played in the entire incident. I do not by any means downplay the seriousness of the offense by emphasizing the extent to which petitioner shows remorse and regret. Certainly, the entire incident as bad as it may be could have been even worse had an occupant of the dwelling been in the living room at the time of the crash or nearby when petitioner randomly emptied shots into the home. I believe that petitioner's conduct during the hearing demonstrated that he was very much aware of the seriousness of the offense and as he put it "only wishes that it had never happened".

Nevertheless, since that point petitioner has demonstrated not only to his wife and children, but also to his employer and society that he can be trusted. He began by becoming a model prisoner, qualifying for the early release program and then being released early from a drug rehabilitation program. Since then he has always held a job even when going to school in the evening. He has in his own words "worked his way up from sweeping floors in the casino to entering data on the player's club cards", a position he thoroughly enjoys. He now plans to increase his knowledge of computers by attending Stockton State College in the fall of 1990.

Taking into account petitioner's age at the time of the incident (21) and considering that seven years have elapsed in which time petitioner has remained law abiding without so much as a speeding ticket, **I FIND** that petitioner has met his burden of proving rehabilitation by clear and convincing evidence. Additionally, considering the factors set forth above **I ALSO CONCLUDE** that petitioner has met his burden to prove by clear and

convincing evidence that he possesses the requisite good character, honesty and integrity necessary for licensure pursuant to sections 90(b) and 89b(1) of the Act.

ORDER

Accordingly, it is hereby **ORDERED** that petitioner shall be permitted to retain his casino registration #90825-40 and his casino license #80107-22.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 20, 1990
DATE

Joseph E. Kane
JOSEPH E. KANE, ALJ

Receipt Acknowledged:

7/25/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

OAL DKT. NO. CCC-09487-89

JUL 26 1990

DATE

Mailed to Parties: Jayne LaVecchia

OFFICE OF ADMINISTRATIVE LAW

pas

OAL DKT. NO. CCC-09487-89

EXHIBITS

FOR PETITIONER:

None.

FOR RESPONDENT:

R-1 Interstate Identification Index
R-2 Letter from Trina B. Trent, Criminal Secretary
Office of the Sheriff, Pittsylvania County, Virginia
R-3 Personal History Disclosure Form-2A

WITNESSES

FOR PETITIONER:
Norman Thompson

FOR RESPONDENT:
Bruce Cooke Agent Division of Gaming Enforcement
Norman Thompson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-344
LICENSE NO. 65505-21
OAL DOCKET NO. CCC 9490-89
ORDER NO. 90-36-8

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

Complainant,

v.

MICHAEL P. TOMLINSON,

Respondent.

ORDER

A hearing 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; and exceptions and a reply to exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of September 12, 1990,

IT IS on this 21st day of September 1990, ORDERED that the initial decision of the Office of Administrative Law is modified as follows:

(1) The Administrative Law Judge (ALJ) incorrectly stated that an individual cannot affirmatively demonstrate rehabilitation pursuant to sections 90(h) and 91(d) of the Act in order to overcome the disqualifying offense of inimicality.

First, "inimicality" is not an offense. In In re Resorts Casino Application

10 N.J.A.R. 244, 254 (1979) the Commission explained the "inimical" offenses are "those offenses which, when viewed in the light of all 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 ... gaming operations."

Second, the ALJ's statement that an individual cannot affirmatively demonstrate rehabilitation from an inimical offense is confusing. The salient point is that the Commission considers rehabilitation factors before concluding that an offense is or is not inimical under section 86 (c)(2). Because the rehabilitation provisions of section 90(h) 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. See, Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301, 314 (1985).

(2) The ALJ incorrectly indicated on page 9 of the initial decision that the respondent was "convicted" of possession of marijuana in violation of N.J.S.A. 2C:35-10a(4). Because the respondent was admitted into a conditional discharge program, a judgment of conviction was not entered in his case. N.J.S.A. 2C:36A-1.

(3) The ALJ's conclusion on page 14 that the respondent's offense of possession of marijuana "constitutes a serious offense when considered that it occurred within the confines of the TropWorld dealers' lounge" is consistent with the

Commission's prior determinations with respect to such offenses. Therefore, the Commission rejects the ALJ's finding at pages 10-11 of the initial decision that his offense was not serious.

(4) The ALJ incorrectly finds that the respondent's conviction must be considered an isolated incident because he had never been arrested or charged with any other offense prior to his March 16, 1989, arrest. N.J.S.A. 5:12-90(h) requires the Commission to consider whether "the offense or conduct was an isolated or repeated incident." While it is true that this was the respondent's only arrest, the respondent's admission that he had smoked marijuana approximately once an month in the dealers' lounge makes his conduct "repeated" within the meaning of section 90(h).

IT IS FURTHER ORDERED that the Commission's order no. 89-20-22-A dated May 19, 1989, suspending the respondent's casino employee license is vacated; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 09490-89

AGENCY DKT. NO. 89-344

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

Petitioner,

vs.

MICHAEL P. TOMLINSON,

Respondent.

R. LANE STEBBINS, Deputy Attorney General for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

JOSEPH C. GRASSI, ESQUIRE, attorney for respondent, Michael P. Tomlinson

Record Closed: JUNE 28, 1990 Decided: JULY 19, 1990

OAL DKT. NO. CCC-9490-89

BEFORE **JOSEPH E. KANE**, ALJ:

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) requesting the revocation of the casino employee license #65505-21 issued to respondent. The Division alleges, among other things, that respondent committed acts which are inimical to the interest of the Casino Control Act and the gaming industry of the State of New Jersey and that respondent lacks the requisite good character, honesty and integrity required for licensure.

PROCEDURAL HISTORY

The Division filed its complaint with the Commission on May 2, 1989. Respondent requested a hearing on May 17, 1989 and on December 6, 1989 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on April 23, 1990 by Jeff S. Masin, ALJ followed by a hearing which was held on June 28, 1990. The record was closed on June 28, 1990.

ISSUES

A. Has Mr. Tomlinson engaged in conduct which indicates

that his continued licensure would be inimical to the policies of the Casino Control Act and casino operations in the State of New Jersey, N.J.S.A. 5:12-86c(2)?

B. Does the respondent have the requisite good character, honesty and integrity for licensure, as required by N.J.S.A. 5:12-89b(2)?

UNCONTESTED FACTS

Based upon testimony and documents proffered at the hearing, the following facts are neither contested nor in dispute. Therefore, these uncontested facts are hereby adopted as **FINDINGS OF FACT** in this matter.

Respondent is a 24 year old single male who, prior to the incident in question, worked at TropWorld for the previous three years as a craps dealer. Respondent's problem with his casino license began on March 16, 1989 when he was arrested and charged with possession of CDS (marijuana) N.J.S.A. 2C:35-10(a)1. Thereafter, he was fired from his job and his license was suspended.

The facts adduced during the hearing on June 28, 1990 stand uncontested largely due to the respondent's cooperation and candid testimony. This testimony is accordingly adopted as **FINDINGS OF FACT.** Respondent, Michael P. Tomlinson now 24 years old began his casino career when he was 19 by attending Casino Schools Incorporated of Atlantic City for four months. There, he learned what was characterized by the State and himself as the most difficult and fast moving casino game, that of dealing craps. In October of 1985 respondent applied for his number two casino license which he received in May of 1986. Respondent's

career began at Caesars where he was employed as a change person for approximately two weeks at which time he secured employment as a craps dealer at TropWorld where he remained until March 16, 1989 the date of his arrest. During these three years, respondent received employment evaluations approximately every six months and was never the subject of a reprimand by his employer.

On March 16, 1989 respondent was working the 10:00 A.M. to 6:00 P.M. shift. The dealers would receive a break for 20 minutes every hour at which time respondent would either go to the cafeteria or to the dealer's lounge. On March 16, 1989 respondent, while in the dealer's lounge locker room area joined approximately seven other individuals who were passing around a marijuana cigarette. Det. J. Griffin observed the respondent and proceeded towards him. Respondent's fellow employees and supervisors, who were sharing the marijuana with him, immediately scattered leaving respondent who was holding the marijuana cigarette to greet Det. Griffin. He was immediately placed under arrest and began to cooperate with Det. Griffin by providing the names of individuals who had been sharing the marijuana cigarette. In response to a request by Det. Griffin, respondent consented to a search of his locker. This subsequently produced a small bag of marijuana which had been placed by respondent into his jacket earlier in the day. The purchase of this marijuana had occurred the same day within the confines of the dealer's lounge. Respondent also voluntarily provided Det. Griffin with the name of the individual from whom he had purchased the marijuana.

As a result of the above incident, respondent was charged

with possession of a controlled dangerous substance, N.J.S.A. 2C:35-10(a)1 and was ordered to appear in the Atlantic City Municipal Court. Since the marijuana in respondent's possession at the time of the arrest was less than 50 grams respondent qualified to enter into a conditional discharge program as authorized by N.J.S.A. 24:21-27. Respondent supplied the requisite amount of urinalysis which proved to be drug free, paid the penalties ordered and thus, having successfully complied with the terms of the conditional discharge program, the charges were dismissed on December 14, 1989.

Respondent testified that he has not smoked marijuana since the March 16, 1989 incident. In suppport of this proposition he stated that on his own volition, he submitted to a drug test on June 8, 1989 at May Malloy Memorial Lab. This resulted in a negative finding for marijuana as well as any other controlled dangerous substance.

When asked why respondent would smoke marijuana in the dealer's lounge, he stated that the usage of marijuana was not considered socially unacceptable. There was no stigma attached to its use and those who smoked marijuana in the dealer's lounge were not ostracized by their fellow employees nor were they reprimanded by their supervisors. One of respondent's supervisors was amongst the seven or so individuals sharing the marijuana cigarette at the time of his arrest. Respondent candidly admitted that he had smoked marijuana in the dealer's lounge on other occasions. Upon questioning by the State, respondent volunteered that he had previously smoked marijuana in the dealer's lounge approximately once a month during the time he was employed by TropWorld.

The State offered no evidence to draw into question or rebut the good character evidence submitted by the respondent. The evidence demonstrates that respondent grew up in a loving, supportive family with his parents emphasizing a good work ethic to their children. This is apparent since from the time respondent was ten years old he worked every summer in and about Wildwood, New Jersey. After losing employment on March 16, 1989, respondent moved to Cherry Hill to seek permanent employment. He was only able to find part-time work as a bus boy/waiter and bartender. He is currently working at Johnson's Restaurant in Wildwood, New Jersey where he began at the age of ten as a dishwasher. Respondent emphasized the importance of the casino industry to his career since it provides him with steady employment at a salary range which is particularly advantageous to one with only a high school education.

In support of respondent's good character, honesty and integrity he presented two witnesses and five letters.

Mr. Frances Tomlinson, father of the respondent and Assistant Chief Investigator for the New Jersey State Office of the Public Defender, testified that he was shocked to learn of the marijuana incident. He testified that through his employment he is familiar with drug usage and saw no evidence of any previous drug usage by his son whom he believes has learned his lesson.

Mrs. Anna M. Vinci testified that she has known the respondent since his birth and that he was an integral part of their family spending many holidays and vacations with the Vincis'. She described respondent as very industrious and respectful from the time he was a child. She never heard any

disparaging rumors about the respondent and trusted him and his family with a key to her house. She believes strongly that respondent has learned his lesson and that he is very remorseful for the shame and economic upheavel it has brought to him and his family. She believes he has gone through much emotional turmoil and has learned his lesson.

The letters presented on behalf of the respondent consists of evidence which is for the most part, cumulative of the testimony set forth above. A common thread that weaves throughout these letters is that their authors have known the respondent since his birth and have always found him to be respectful and hardworking. They uniformly indicate that they were shocked to learn of the marijuana incident, however, they have personally observed the respondent's sense of remorse and all share a belief that the conduct will not be repeated.

DISCUSSION AND CONCLUSIONS

The two issues presented herein are whether continuing licensure of the respondent would be inimical to the policies of the Casino Control Act and the gaming industry in general pursuant to N.J.S.A. 5:12-86c(2) and whether the respondent possesses the requisite good character, honesty and integrity required of a license holder under N.J.S.A. 5:12-89b(2). It is unnecessary to reach the second issue of the respondent's good character, honesty and integrity if it is first determined that respondent's continuing licensure would be inimical to the Casino Control Act and the gaming industry. Thus, the inimical analysis must be considered first.

N.J.S.A. 5:12-86c(2) states:

> "Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of ths act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10 year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing."

Whether an individual's conduct rises to the level of inimicality to the Act and legalized gaming depends upon the circumstances of each case. The factors to be weighed and considered are the nature of the offense, the circumstances surrounding the offense including mitigating and aggravating factors, the amount of time that has passed from the offense to the date of the hearing. See Davis vs. Division of Gaming Enforcement, 8 N.J.A.R. 301 at 313. Included in this analysis are the eight factors set forth in section 90(h) and 91(d) of the Act. It must be emphasized that an individual cannot affirmatively demonstrate rehabilitation pursuant to 90(h) and 91(d) of the Act in order to overcome the disqualifying offense of inimicality set forth in section 86c(2). Nevertheless, the enumerated rehabilitation factors set forth in sections 90(h) and 91(d) of the Act can be utilized in the inimical analysis in order to determine whether an individual must be disqualified from participation in the gaming industry. Applying these

factors to the facts of the instant matter I **FIND** as follows:

1. Nature of the offense.

Respondent was convicted of possession of a controlled dangerous substance, N.J.S.A. 2C:35-10a4. He received a conditional discharge since the amount of marijuana was less than 50 grams. See N.J.S.A. 24:21-27. The latter statute evidences an intent on the part of the legislature to lessen and/or decriminalize the act of possession of marijuana under 50 grams. An individual qualifies for the conditional discharge program if the amount of the controlled dangerous substance (marijauna) found on the accused is less than 50 grams and if the accused has not already received the benefits of the conditional discharge program. In effect, the legislature has provided the accused with one free bite at the apple since the right to enter into the conditional discharge program is a one time privilege.

> "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". Davis supra at page 313.

Assume for the sake of argument that respondent had committed the same act off the premises of his employer, TropWorld. In such an event, respondent's actions would not be considered inimical to the Act or to the gaming industry. Inimicality comes into play because respondent committed the violation while a representative of TropWorld in particular and the gaming industry in general. The offense, however, did not occur in clear view of the public. This is not to downplay in any way the intoxicating effects smoking marijuana on break may have had on respondent's performance back at the craps table. There was no evidence presented by the State to indicate that respondent was impaired while performing his job or while visible to the public. The disturbing factor which must be considered is respondent's candid admission that he had engaged in the same conduct in the dealer's lounge on other occasions. Such conduct is reprehensible not only because of the obvious illegal nature of it, but also because of the potential effects being under the influence while conducting a craps game could have upon the gaming industry.

Nevertheless, as set forth in Davis supra, each decision must rise or fall based upon the particular circumstances surrounding the offense. In this instance, a mitigating factor is that the legislature through the enactment of the conditional discharge statute, N.J.S.A. 24:21-27 has given an individual one break, one chance not to have a criminal record. When balanced against the circumstances surrounding the offense and subject conduct of the respondent as more fully set forth below, I **FIND** that the offense committed by respondent on March 16, 1989 is not

serious and is not of such a nature that if respondent was permitted to retain his license, public confidence in the gaming industry would be lessened or destroyed.

2. Circumstances of the offense.

Respondent testified that at least six to ten individuals were smoking the marijuana cigarette with him at the time of his arrest. Some of these individuals included his supervisors. Respondent also testified that smoking marijuana in the dealer's lounge occurred on a daily basis and was considered socially acceptable. Essentially respondent offered the thundering herd defense. That is, if everybody is doing it it must be right. Although respondent's contention must be rejected as a defense, the circumstances giving rise to his action deserve comment and consideration. Respondent was 22 years old on March 16, 1989 and had observed smoking of marijuana in the dealer's lounge for some three years previous. Although respondent knew it was illegal, he must have considered that it was condoned since participants consisted of employees of a greater age than respondent including, and most importantly, his supervisors. The ease in which drugs could be obtained and used in such an environment mitigates slightly in respondent's favor in that he committed an act, albeit illegal, but one which was apparently condoned and considered socially acceptable by respondent's supervisors.

3. Date of the offense and age of the respondent.

Respondent had worked in the casino industry for three years prior to March 16, 1989. He commenced employment when he was 19 years old and was 24 years old at the time the offense occurred. Respondent attributed his marijuana smoking to his "youth" and feels that both time and the incident have provided

him with a sense of maturity. It has been approximately 15 months from the date of the offense during which time it was unrefuted that respondent had not smoked marijuana, had successfully completed a conditional discharge program and submitted a lab report indicating negative drug use as recently as June 8, 1990.

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

By respondent's own candid admission he had smoked marijuana approximately once a month in the dealer's lounge during the time he was employed at TropWorld. Although I commend respondent for his candor, I cannot condone his continuing drug use, albeit infrequent, prior to the March 16, 1989 incident. In respondent's favor, I **FIND** that he has never been arrested or charged with any other offense prior to or after the March 16, 1989 incident. Accordingly, for the purposes of a criminal arrest or conviction history, I **FIND** that the incident must be considered an isolated incident.

7. Social conditions attributing to the offense.

Throughout the course of the hearing, respondent demonstrated, and the State did not refute, the fact that respondent was raised in a loving family environment that instilled in him a sense of fairness and hard work. Respondent has worked every summer since he was ten years old and has remained employed to the present. He expressed a sense of regret for the effects the March 16, 1989 incident has had on him and his family.

The evidence as to respondent's good character, honesty and integrity stood unrefuted. The common theme that appears in the testimony of the witnesses and the letters of recommendation

presented on behalf of the respondent is that they have all known him since birth, have found him to be respectable and hard working and still hold these opinions even though they have been apprised of his arrest for possession of CDS.

The inquiry is whether any social conditions contributed to the offense. Section 90(h) or 91(d) does not contain the definition of "social conditions". Nevertheless, I believe it is reasonable to assume that the proper inquiry is whether the environment both in and out of the family contributed to the offense in question. As more fully set forth in Paragraph 2 above, the environment in the dealer's lounge could have very easily adversely affected the respondent. There, he was exposed to peers and authority figures engaging in illegal, albeit within that context, socially acceptable behavior. Once again, respondent's thundering herd defense should not be accepted, however, the environment in which he was exposed should be considered as a mitigating factor to lessen the severity of the conduct.

8. Evidence of rehabilitation.

Subsection 8 of 90(h) and 91(d) of the Act sets forth a broad list of elements which are to be considered as mitigating factors when evaluating whether an individual has been rehabilitated. Within the context of the inimical analysis, however, these enumerated factors are utilized not to determine rehabilitation but instead to evaluate whether the offense itself or the respondent's continuing licensure would rise to the level of inimicality.

Mitigating in respondent's favor is the fact that he

successfully completed the conditional discharge program as of December 14, 1989, has not smoked marijuana since the March 16, 1989 incident and submitted recent proof of his abstinence from drugs in the form of a voluntary drug screen performed on June 8, 1990.

During the entire hearing conducted on June 28, 1990 the respondent presented all of the above evidence in a respectful and credible manner. As indicated in paragraph Uncontested Facts above, the evidence set forth herein stood unrefuted by the State.

CONCLUSION

The crime to which respondent pled guilty, N.J.S.A. 2C:35-10a4, possession of a controlled dangerous substance (marijuana) constitutes a serious offense when considered that it occured within the confines of the TropWorld dealer's lounge. This, however, is the only aggravating factor set forth in the above analysis. Mitigating greatly in favor of the respondent are the circumstances under which the offense occurred, the age of the respondent, respondent's good record and conduct both before and after the offense and the persuasive testimony and evidence tending to show respondent's good character, honesty and integrity. The respondent's conduct since the event including his sincere sense of remorse make it unlikely that the offense will be repeated.

I **CONCLUDE**, therefore, that respondent's continuing licensure is not inimical to the Casino Control Act and the gaming industry.

Section 5:12-89b(2) of the Act requires that whenever the Division of Gaming Enforcement raises as an issue the good character, honesty and integrity of the respondent, it is then respondent's burden to show by clear and convincing evidence that he possesses the requisite good character, honesty and integrity required for licensure under the Act. In accordance with the strict regulatory provisions intended by the legislature it is imperative that the character and background of the licensee be closely scrutinized and evaluated as to fitness for licensure. Clear and convincing falls between the usual civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt. Here the trier of fact should have a firm belief that the facts presented by respondent are true. The standard requires more than the mere balancing of probabilities but less than absolute certainty. A reasonable certainty is required. Lepre vs. Caputo, 131 N.J. Super. 118(Law Div.1974)

Respondent produced two witnesses and five letters from friends which stood unrefuted by the State. As more fully set forth in Uncontested Facts above, these letters testify to respondent's good character, honesty and integrity despite his March 16, 1989 conviction. Perhaps the most revealing testimony is that of Mrs. Vinci who indicated that she had and would trust respondent and other members of this family with the key to her home. Respondent's honesty and integrity was demonstrated by his willingness to provide Det. Griffin with the names of the individuals involved in the incident on March 16, 1989. His honesty was demonstrated, almost to his detriment, by revealing that he had smoked marijuana in the dealer's lounge on other occasions. His good character is demonstrated by his successful

completion of the conditional discharge program together with his voluntary willingness to submit to a drug screen on June 8, 1990.

I CONCLUDE, therefore, that respondent does possess the requisite good character, honesty and integrity required for licensure under Section 89b(2) of the Act.

ORDER

Accordingly, it is hereby **ORDERED** that respondent, **MICHAEL P. TOMLINSON,** shall be permitted to retain his casino employee license number 65505-21.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 27, 1990
DATE

JOSEPH E. KANE, ALJ

Receipt Acknowledged:

7/31/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 0 1 1990

DATE

OFFICE OF ADMINISTRATIVE LAW

pas

OAL DKT. NO. CCC-9490-89

EXHIBITS

FOR PETITIONER:

P-1 New Jersey State Police Investigation Report dated March 16, 1989

P-2 Complaint & Summons dated March 16, 1989

FOR RESPONDENT:

R-1 Roche Biomedical Lab-Cape May t/a May Malloy Memorial Lab Urinalysis Report dated June 11, 1990

R-2 Letter from Lewis G. Vinci dated May 23, 1990

R-3 Letter from William J. Wizst dated May 20, 1990

R-4 Letter from Allen Johnson dated May 22, 1990

R-5 Letter from Helen G. Mace dated May 21, 1990

R-6 Letter from Albert Craven dated May 22, 1990

R-7 Letter from City of Atlantic City Municipal Court dated December 14, 1989

WITNESSES

FOR PETITIONER:

Michael P. Tomlinson

FOR RESPONDENT:

Michael P. Tomlinson

Francis D. Tomlinson

Anna M. Vinci

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-384
OAL DOCKET NO. CCC 6174-88
ORDER NO. 90-40-2

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	ORDER
v.	:	
TRUMP PLAZA ASSOCIATES, T/A TRUMP PLAZA HOTEL AND CASINO,	:	
Respondent.	:	

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge, incorporating the Stipulation of Facts and Settlement Agreement, having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of October 10, 1990;

IT IS on this 9th day of November 1990, ORDERED that the initial decision-settlement is adopted by the Commission; and

IT IS FURTHER ORDERED that Trump Plaza Associates, t/a Trump Plaza Hotel and Casino pay a monetary penalty in the amount of $92,500; $30,000 for its admitted violation of N.J.A.C. 19:45-1.27; $60,000 for its admitted violations of N.J.A.C. 19:45-1.27(a), -1.27(d), -1.27(f) and -1.27(g); and $2,500 for

its admitted violations of N.J.A.C. 19:45-1.26(f) and N.J.A.C. 19:45-1.2.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT
OAL DKT. NO. CCC 6174-88
AGENCY DKT. NO. 88-384

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
TRUMP PLAZA ASSOCIATES,
T/A TRUMP PLAZA HOTEL AND CASINO,
Respondent.

Kevin F. O'Toole, Deputy Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)
Brian D. Spector, Esq., for respondent Trump Plaza (Ribis, Graham, Verdon & Curtin, attorneys)

Record Closed: July 9, 1990 Decided: July 19, 1990

BEFORE **LILLARD E. LAW,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

1. On June 3, 1988, the Division filed a six count complaint with the Casino Control Commission (hereinafter "the Commission") against Trump Plaza. The Division's complaint charged Trump Plaza with violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq. (hereinafter "the Act"), and Commission regulations

promulgated thereunder, arising out of circumstances involving the extension of a $500,000 casino credit line to patron Richard Hartman on August 28, 1987, the extension of $500,000 increase to Mr. Hartman's credit line on September 3,1 987, and the processing and recording of credit-related transactions involving an $817,000 certified check and a $183,000 customer's check negotiated by Mr. Hartman at Trump Plaza on September 21, 1987.

2. A plenary hearing regarding the issues raised in the Division's complaint was conducted before the undersigned and was heard on July 31, August 1, 2, 3,4 and September 21, 1989. The record remained open in order to give the parties an opportunity to submit post hearing briefs.

3. During the course of the plenary hearing, the Division moved to amend its complaint and the Prehearing Order to conform the issues to the proofs established at the hearing. More specifically, the Division raised four (4) additional issues designated as Counts VII through X, described as follows:

> Count VII - Whether, N.J.A.C. 19:45-1.27(d) was violated on September 3, 1987 when Credit Executive John Goff obtained credit verification information from Harrah's Marina regarding Richard Hartman's casino credit limit and outstanding balance at Harrah's Marina in that said information was not recorded in Mr. Hartman's credit file and accompanied by the signature of Mr. Goff along with the date and time.
>
> Count VIII - Whether N.J.A.C. 19:45-1.27(d) was violated in that "+Sands 400,000" was recorded in conjunction with a September 3, 1987 entry in the credit file of Richard Hartman without the signature of the credit department representative who made the notation or the date or time of the signature and without any indication as to the method by which the information was obtained.
>
> Count IX - Whether the contemporaneous request and approval for Richard Hartman's casino credit limit increase on September 3, 1987 violates the provisions of N.J.A.C. 19:45-1.27(g)1i.
>
> Count X - Whether N.J.A.C. 19:45-1.27(a)5ii (patron's type of business), N.J.A.C. 19:45-1.27(a)5iii (patron's position), N.J.A.C. 19:45-1.27(a)6 (patron's banking information), N.J.A.C. 19:45-1.27(a)9 (patron's approximate amount of all other outstanding indebtedness), and N.J.A.C. 19:45-1.27(a)10 (the amount and source of the patron's income

and assets) were violated on the basis that Credit Executive John Goff recorded said information on Richard Hartman's credit application card from information not provided by the patron.

4. On August 4, 1989, the undersigned granted the Division's motion to amend.

5. On August 4, 1989, the undersigned also considered a motion made by respondent to dismiss the charges alleged in the Division's complaint. On that date, the ALJ granted respondent's motion to dismiss the allegation that Trump Plaza violated N.J.A.C. 19:45-1.26(f) in connection with the processing of the $183,000 customer check negotiated by Mr. Hartman as part of a counter check redemption transaction that occurred on September 21. 1987. Based upon the testimony of Joanne Lohin, Casino Cage Shift Supervisor, the Division consented to the dismissal of said allegation.

6. Subsequent to the conclusion of the plenary hearing, the parties have engaged in further settlement negotiations and, as a result thereof, have agreed to resolve all the issues by way of the instant Settlement Agreement. Said Settlement Agreement was received on July 9, 1990, which constitutes the record closed date.

7. For purposes of this Settlement Agreement, the parties agree that the factual record consists of the following: (1) A Partial Stipulation of Facts executed by the parties at the commencement of the plenary hearing (Exhibit J-1), as modified in part based on the testimonial and documentary evidence presented at the hearing; (2) The testimony of all witnesses presented at the plenary hearing; and (3) The documents admitted into evidence at the plenary hearing.

SETTLEMENT TERMS

WHEREAS, with respect to Count I of Division Complaint No. 88-384, respondent admits the following violations with respect to its August 28, 1987, decision to approve a $500,000 credit limit for patron Richard Hartman:

(1) Respondent did not adequately record in Mr. Hartman's credit file information used and a brief summary of the key factors relied upon in its

decision to approve the credit limit, in violation of N.J.A.C. 19:45-1.27(f) 1 and 2; and

(2) Respondent did not adequately record in Mr. Hartman's credit file the reasons credit was approved in violation of N.J.A.C. 19:45-1.27(f) 3 in light of all of the following:

(a) The apparently conflicting information regarding the type, balances and date opened of Mr. Hartman's checking account obtained by respondent during the verification process;

(b) The derogatory consumer credit information obtained by respondent during the verification process; and

(c) Mr. Hartman's 1984 casino credit problems disclosed during the verification process.

WHEREAS, with respect to Counts II, III and IV and amended Counts VII, VIII and IX of Division Complaint No. 88-384, respondent admits that its September 3, 1987 decision to increase the credit limit of Mr. Hartman by an additional $500,000 violated N.J.A.C. 19:45-1.27(a) and (f) by virtue of the following:

(1) Respondent could not establish that it recorded the time of the patron's initial request for a credit limit increase on September 3, 1987, in violation of N.J.A.C. 19:45-1.27(g)1i;

(2) Respondent did not adequately verify and/or record in Mr. Hartman's credit file all available current casino credit limits and outstanding balances on September 3, 1987, with respect to Mr. Hartman's credit accounts at Harrah's Marina Casino Hotel and The Sands Hotel and Casino, in violation of N.J.A.C. 19:45-1.27 (g) 2 and N.J.A.C. 19:45-1.27(d);

(3) Respondent did not adequately record in Mr. Hartman's credit file the special payment arrangement made with Mr. Hartman and relied upon by respondent in approving the credit limit increase, in violation of N.J.A.C. 19:45-2.17 (f) 1 and 2;

(4) Respondent did not adequately record in Mr. Hartman's credit file the reasons the increase was approved in violation of N.J.A.C. 19:45-1.27 (f)3, in light of:

(a) The initial deficiencies in its decision to extend credit as set forth above with respect to Count I;

(b) Mr. Hartman's then outstanding credit balances at other Atlantic City casinos; and

(c) Mr. Hartman's then outstanding credit balance and gaming losses at respondent's casino during the period between the initial extension of credit and the approval of the increase.

WHEREAS, with respect to Count V of Division Complaint No. 88-384, the Division consented to the dismissal of the allegation that respondent violated N.J.A.C. 19:45-1.26 (f) regarding the processing of the $183,000 customer check utilized in the redemption transaction of September 21, 1987.

WHEREAS, with respect to Count V of Division Complaint No. 88-384, respondent admits that it violated N.J.A.C. 19:45-1.26 (f) regarding the processing of the $817,000 certified check utilized in the redemption transaction of September 21, 1987. This admission of liability is for this litigation only.

WHEREAS, with respect to Count VI of Division Complaint No. 88-384, respondent admits that it violated N.J.A.C. 19:45-1.2(a) in that it failed to prepare adequate documentation to memorialize the buy-back of the certified check from patron Hartman on September 21, 1987.

WHEREAS, subsequent to the filing of Division Complaint No. 88-384, respondent has implemented satisfactory corrective measures to insure that all checks received in redemption transactions are processed in accordance with N.J.A.C. 19:45-1.26 (f) and that a contemporaneous record is prepared and maintained for a patron buy back of a cash equivalent;

WHEREAS, with respect to amended Count X, the Division consents to the dismissal of its allegation that credit executive John Goff recorded certain information on Mr. Hartman's credit application form dated August 28, 1987, that was not provided by the patron.

IT IS THEREFORE consented to and agreed upon by and between the parties that:

A. Respondent Trump Plaza Associates agrees to pay the sum of thirty thousand dollars ($30,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129 (5) for the aforementioned violations of N.J.A.C. 19:45-1.27 (f) relative to Count I of the Division Complaint No. 88-384.

B. Respondent Trump Plaza Associates agrees to pay the sum of sixty thousand dollars ($60,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129 (5) for the aforementioned violations of N.J.A.C. 19:45-1.27 (a), 1.27 (f), 1.27 (g) and 1.27 (d) relative to Counts II, III, IV, and amended Counts VII, VIII and IX of Division Complaint No. 88-384.

C. Respondent Trump Plaza Associates agrees to pay the sum of two thousand five hundred dollars ($2,500) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129 (5) for the aforementioned violations of N.J.A.C. 19:45-1.26 (f) and N.J.A.C. 19:45-1.2 (a) relative to Counts V and VI of Division Complaint No. 88-384.

D. This Settlement Agreement, upon approval of the Casino Control Commission, is a full and final settlement of all allegations set forth in Division Complaint No. 88-384.

FINDINGS

Having reviewed and considered the entire record before me, I **FIND** that:

1. The parties have voluntarily entered into the settlement of this matter as evidenced by their respective signatures on the Settlement Agreement; and

2. The settlement is a fair one under the circumstances and disposes of all issues in controversy between the parties in this case; and

3. The settlement is consistent with the law.

CONCLUSIONS

I **CONCLUDE**, therefore, that the proposed penalties totaling an amount of $92,500.00 upon Trump Plaza is appropriate and shall be imposed.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION** who 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

19 July 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

7/25/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 26 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

ROBERT J. DEL TUFO
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By: Brian D. Spector, Esquire

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO.: CCC 6174-88
AGENCY DOCKET NO.: 88-384

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Complainant, v. TRUMP PLAZA ASSOCIATES, t/a TRUMP PLAZA HOTEL AND CASINO, Respondent.	Civil Action SETTLEMENT AGREEMENT

With the above-captioned matter having been discussed by and between the parties involved, Robert J. Del Tufo, Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement (hereinafter "the Division"), by Kevin F. O'Toole, Deputy Attorney General, and Ribis, Graham & Curtin (by Brian D. Spector, Esquire),

Attorneys for Respondent, Trump Plaza Associates (hereinafter "Trump Plaza" or "Respondent"), and all matters having been agreed upon, it is hereby stipulated and agreed by and between the parties as follows:

1. On June 3, 1988, the Division filed a six count complaint with the Casino Control Commission (hereinafter "the Commission") against Trump Plaza. The Division's complaint charged Trump Plaza with violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq. (hereinafter "the Act"), and Commission regulations promulgated thereunder, arising out of circumstances involving the extension of a $500,000 casino credit line to patron Richard Hartman on August 28, 1987, the extension of a $500,000 increase to Mr. Hartman's credit line on September 3, 1987, and the processing and recording of credit-related transactions involving an $817,000 certified check and a $183,000 customer's check negotiated by Mr. Hartman at Trump Plaza on September 21, 1987.

2. A plenary hearing regarding the issues raised in the Division's Complaint was conducted before the Honorable Lillard E. Law, Administrative Law Judge, which hearing concluded on September 21, 1989.

3. During the course of the plenary hearing, the Division moved to amend its Complaint and the Prehearing Order to conform the issues to the proofs established at the hearing. More specifically, the Division raised four (4) additional issues designated Counts VII through X, described as follows:

> Count VII - Whether N.J.A.C. 19:45-1.27(d) was violated on September 3, 1987 when Credit Executive John Goff

obtained casino credit verification information from Harrah's Marina regarding Richard Hartman's casino credit limit and outstanding balance at Harrah's Marina in that said information was not recorded in Mr. Hartman's credit file and accompanied by the signature of Mr. Goff along with the date and time.

Count VIII - Whether N.J.A.C. 19:45-1.27(d) was violated in that "+ Sands 400,000" was recorded in conjunction with a September 3, 1987 entry in the credit file of Richard Hartman without the signature of the credit department representative who made the notation or the date or time of the signature and without any indication as to the method by which the information was obtained.

Count IX - Whether the contemporaneous request and approval for Richard Hartman's casino credit limit increase on September 3, 1987 violates the provisions of N.J.A.C. 19:45-1.27(g)1i.

Count X - Whether N.J.A.C. 19:45-1.27(a)5ii (patron's type of business), N.J.A.C. 19:45-1.27(a)5iii (patron's position), N.J.A.C. 19:45-1.27(a)6 (patron's banking information), N.J.A.C. 19:45-1.27(a)9 (patron's approximate amount of all other outstanding indebtedness), and N.J.A.C. 19:45-1.27(a)10 (the amount and source of the patron's income and assets) were violated on the basis that Credit Executive John Goff recorded said information on Richard Hartman's credit application card from information not provided by the patron.

4. On August 4, 1989, Judge Law granted the Division's motion to amend.

5. On August 4, 1989, Judge Law also considered a motion made by Respondent to dismiss the charges alleged in the Division's Complaint. On that date, Judge Law granted Respondent's motion to dismiss the allegation that Trump Plaza violated N.J.A.C. 19:45-1.26(f) in connection with the processing of the $183,000 customer check negotiated by Mr. Hartman as part of a counter check redemption transaction that occurred on September 21, 1987. Based

upon the testimony of Joanne Lohin, Casino Cage Shift Supervisor, the Division consented to the dismissal of said allegation.

6. Subsequent to the conclusion of the plenary hearing, the parties have engaged in further settlement negotiations and, as a result thereof, have agreed to resolve all issues by way of the instant Settlement Agreement. Said Settlement Agreement is submitted to the Office of Administrative Law pursuant to N.J.A.C. 1:1-19.1.

7. For purposes of this Settlement Agreement, the parties agree that the factual record consists of the following: (1) A Partial Stipulation of Facts executed by the parties at the commencement of the plenary hearing (Exhibit J-1), as modified in part based on the testimonial and documentary evidence presented at the hearing; (2) The testimony of all witnesses presented at the plenary hearing (attached hereto is a list of the witnesses who testified at the hearing); and (3) The documents admitted into evidence at the plenary hearing (attached hereto is a list of the documentary evidence admitted at the hearing).

SETTLEMENT TERMS

WHEREAS, with respect to Count I of Division Complaint No. 88-384, Respondent admits the following violations with respect to its August 28, 1987, decision to approve a $500,000 credit limit for patron Richard Hartman:

(1) Respondent did not adequately record in Mr. Hartman's credit file information used and a brief summary of the key factors relied upon in its decision to approve the credit limit, in violation of N.J.A.C. 19:45-1.27(f)1 and 2; and

(2) Respondent did not adequately record in Mr. Hartman's credit file the reasons credit was approved in violation of N.J.A.C. 19:45-1.27(f)3 in light of all of the following:

(a) The apparently conflicting information regarding the type, balances and date opened of Mr. Hartman's checking account obtained by Respondent during the verification process;

(b) The derogatory consumer credit information obtained by Respondent during the verification process; and

(c) Mr. Hartman's 1984 casino credit problems disclosed during the verification process.

WHEREAS, with respect to Counts II, III and IV and amended Counts VII, VIII and IX of Division Complaint No. 88-384, Respondent admits that its September 3, 1987 decision to increase the credit limit of Mr. Hartman by an additional $500,000 violated N.J.A.C. 19:45-1.27(a) and (f) by virtue of the following:

(1) Respondent could not establish that it recorded the time of the patron's initial request for a credit limit increase on September 3, 1987, in violation of N.J.A.C. 19:45-1.27(g)1i;

(2) Respondent did not adequately verify and/or record in Mr. Hartman's credit file all available current casino credit limits and outstanding balances on September 3, 1987, with respect to Mr. Hartman's credit accounts at Harrah's Marina Casino Hotel and The Sands Hotel and Casino, in violation of N.J.A.C. 19:45-1.27(g)2 and N.J.A.C. 19:45-1.27(d);

(3) Respondent did not adequately record in Mr. Hartman's credit file the special payment arrangement made with Mr. Hartman and relied upon by Respondent in approving the credit limit increase, in violation of N.J.A.C. 19:45-2.17(f)1 and 2;

(4) Respondent did not adequately record in Mr. Hartman's credit file the reasons the increase was approved in violation of N.J.A.C. 19:45-1.27(f)3, in light of:

(a) The initial deficiencies in its decision to extend credit as set forth above with respect to Count I;

(b) Mr. Hartman's then outstanding credit balances at other Atlantic City casinos; and

(c) Mr. Hartman's then outstanding credit balance and gaming losses at Respondent's casino during the period between the initial extension of credit and the approval of the increase.

WHEREAS, with respect to Count V of Division Complaint No. 88-384, the Division consented to the dismissal of the allegation that Respondent violated N.J.A.C. 19:45-1.26(f) regarding the processing of the $183,000 customer check utilized in the redemption transaction of September 21, 1987.

WHEREAS, with respect to Count V of Division Complaint No. 88-384, Respondent admits that it violated N.J.A.C. 19:45-1.26(f) regarding the processing of the $817,000 certified check utilized in the redemption transaction of September 21, 1987. This admission of liability is for this litigation only.

WHEREAS, with respect to Count VI of Division Complaint No. 88-384, Respondent admits that it violated N.J.A.C. 19:45-1.2(a) in that it failed to prepare adequate documentation to memorialize the buy-back of the certified check from patron Hartman on September 21, 1987.

WHEREAS, subsequent to the filing of Division Complaint No. 88-384, Respondent has implemented satisfactory corrective measures to insure that all checks received in redemption transactions are processed in accordance with N.J.A.C. 19:45-1.26(f) and that a contemporaneous record is prepared and maintained for a patron buy back of a cash equivalent;

WHEREAS, with respect to amended Count X, the Division consents to the dismissal of its allegation that credit executive John Goff recorded certain information on Mr. Hartman's credit application form dated August 28, 1987, that was not provided by the patron.

IT IS THEREFORE consented to and agreed upon by and between the parties that:

A. Respondent Trump Plaza Associates agrees to pay the sum of thirty thousand dollars ($30,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.27(f) relative to Count I of Division Complaint No. 88-384.

B. Respondent Trump Plaza Associates agrees to pay the sum of sixty thousand dollars ($60,000) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.27(a), 1.27(f), 1.27(g) and 1.27(d) relative to Counts II, III, IV, and amended Counts VII, VIII, and IX of Division Complaint No. 88-384.

C. Respondent Trump Plaza Associates agrees to pay the sum of two thousand five hundred dollars ($2,500) to the New Jersey Casino Control Fund pursuant to N.J.S.A. 5:12-129(5) for the aforementioned violations of N.J.A.C. 19:45-1.26(f) and N.J.A.C. 19:45-1.2(a) relative to Counts V and VI of Division Complaint No. 88-384.

D. This Settlement Agreement, upon approval of the Casino Control Commission, is a full and final settlement of all allegations set forth in Division Complaint No. 88-384.

Kevin F. O'Toole 7/9/90

Kevin F. O'Toole, Esquire
Deputy Attorney General
Attorney for Complainant
State of New Jersey,
Department of Law & Public
Safety, Division of Gaming
Enforcement

Brian D. Spector, Esquire
Ribis, Graham & Curtin
Attorneys for Respondent
Trump Plaza Associates

9/cb

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-247
OAL DOCKET NO. CCC 02290-89
ORDER NO. 90-50-26

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

Complainant,

ORDER

v.

TRUMP PLAZA ASSOCIATES t/a TRUMP
PLAZA HOTEL AND CASINO,

Respondent.

A hearing 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 exceptions having been filed by the complainant; and a reply to these exceptions having been filed by the respondent; and the Commission having considered the entire record of these proceedings at its public meetings of December 5, and December 19, 1990; and for the reasons stated on the record of the Commission's public meeting of December 19, 1990;

IT IS on this 21st day of December 1990, ORDERED that:

1. The ALJ's rulings that evidence of events and conversations occurring after the period during which the complaint alleged the violations to have occurred is inadmissible are rejected. There was no need for either the complaint or the prehearing conference order to reference such events or conversations for them to be admitted into evidence. The use of this evidence would not have unfairly surprised the respondent,

since it had notice of such events and conversations by way of discovery. Additionally, the admission of this evidence would not have unduly delayed the hearing given that the sources of such evidence were the same witnesses who also testified about the alleged violations;

2. To the extent that the ALJ's rulings imply that Rule 51 of the Rules of Evidence governing court proceedings, which prohibits the use of subsequent remedial measures to prove negligence or culpable conduct, bars the use of such evidence in proceedings regarding violations of the Casino Control Act, they are rejected. This provision does not serve as a bar to the admission of evidence in such proceedings, as the Casino Control Act expressly provides that any relevant evidence is admissible in such proceedings notwithstanding the rules of evidence. N.J.S.A. 5:12-107(a)(6);

3. The record is reopened for the purpose of receiving evidence which was improperly excluded by the ALJ by way of the aforementioned rulings. The proffer may include evidence of any change in policy or procedures by respondent regarding the removal or reassignment of employees after the time when the violations were alleged to have occurred. It may also include any evidence of events or conversations occurring after this time which concern the alleged violations or the qualifications of the employees who were removed or reassigned;

4. This matter is not remanded to the Office of Administrative Law. Vice-Chair Armstrong is hereby designated the hearing officer to preside over the hearing which will be held to receive the evidence that was improperly excluded.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2290-89
AGENCY DKT. NO. 89-247

STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING
ENFORCEMENT,
Petitioner,
v.
TRUMP PLAZA ASSOCIATES,
T/A TRUMP PLAZA
HOTEL AND CASINO,
Respondent.

Timothy C. Ficchi, Deputy Attorney General and **Fredric E. Gushin**, Assistant Attorney General, for petitioner (Robert J. Del Tufo, Attorney General of New Jersey, attorney)
Brian D. Spector, Esq. and **Patricia M. Wild, Esq.**, for respondent (Ribis, Graham & Curtin, attorneys)

Record Closed: July 2, 1990 **Decided: August 16, 1990**

BEFORE **LILLARD E. LAW**, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a two-count complaint on February 16, 1989, with the Casino Control Commission (Commission) alleging, among other things, that respondent Trump Plaza Associates, t/a Trump Plaza Hotel

and Casino (Trump Plaza) discriminated against certain of its employees because of their gender and/or race by prohibiting the employees to act within scope of their employment while a certain patron engaged in gaming activity at Trump Plaza during divers times in 1987 and 1988. On March 23, 1989, Trump Plaza filed its Notice of Defense and Request for a hearing with the Commission. On December 19, 1989, the Office of Administrative Law (OAL) was in receipt of an Amended Complaint filed by the Division.

PROCEDURAL HISTORY

The matter was transmitted from the Commission to the OAL on March 28, 1989, 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 29, 1989, a prehearing conference was conducted at which, among other things, it was ordered that " ... all discovery shall be completed no later than October 1, 1989" (Prehearing Order, July 12, 1989, section VIII, D). It was also determined that the hearing in this matter was to commence on October 24, 1989 and continue for nine days thereafter to conclusion on or before November 20, 1989.

On March 20 and June 22, 1989, respondent Trump Plaza had served two separate written requests for discovery upon the Division. On August 21, 1989, the Division provided respondent Trump Plaza with two loose-leaf binders containing in excess of 1,000 pages of sworn and unsworn statements. On October 2, 1989, the Division responded to respondent's supplemental discovery request by serving Trump Plaza with an additional 500 plus pages of material.

On or about August 23, 1989, the Division propounded and served its Interrogatories upon respondent, followed on September 28, 1989, with its Supplemental Interrogatories.

On September 18, 1989, Trump Plaza propounded a short set of Interrogatories upon the Division requesting information which had not been provided but promised by the Division at the prehearing conference.

On October 2, 1989, a telephone conference call was initiated by counsel for respondent asserting, among other things, that the Division had failed to provide

requested discovery. In particular, Trump Plaza asserted that the Division had failed to answer respondent's Initial Interrogatories. The Division could not assure the undersigned that it could complete the requested discovery in sufficient time for respondent to prepare its defenses, therefore, the hearing dates scheduled October 24, 26, 30 and 31, 1989 were adjourned. The hearing was then to commence on November 13, 1989, and continue for five days thereafter through November 20, 1989. Additional hearing days were added in January and February 1990.

On October 26, 1989, counsel for Trump Plaza initiated a conference call with the undersigned and the Deputy Attorney General representing the Division, seeking an order from this administrative tribunal to compel the Division to respond to respondent's discovery requests. The Deputy Attorney General assured the undersigned that the requested discovery would be forthcoming and that an order was not necessary. Notwithstanding the Divisions assertions, an oral order was issued compelling the Division to complete discovery.

On November 2, 1989, Trump Plaza asserted that it had been in receipt of Answers to its Initial Interrogatories from the Division on November 1, 1989, and that the Division's answers were totally unresponsive. Trump Plaza then propounded a motion together with a letter memorandum, seeking the following relief: (1) Dismiss the Division's complaint without prejudice; or (2) Require the Division to supply fully responsive answers to Interrogatories and adjourn the hearing dates scheduled in November 1989, until January 29, 1990, to provide the parties sufficient time to prepare their respective cases.

Oral argument on the Motion to Dismiss or Compel Discovery was had on November 2, 1989, Brian D. Spector, Esq., appearing for movant Trump Plaza Associates; Fredric E. Gushin and Timothy C. Ficchi, Deputy Attorneys General, arguing for the Division. The Division requested and was granted leave to file its brief regarding the issues raised by respondent. The undersigned was in receipt of the Division's brief on the morning of November 8, 1989. On November 8, 1989, via fax, the respondent submitted its response to the Division's brief by way of letter memorandum.

On November 8, 1989, counsel for Trump Plaza requested a conference call with the Division and this tribunal to argue the propriety of the Division conducting

interviews of respondent's employees in preparation for the hearing. Respondent's request was granted and oral argument was heard on November 8, 1989 concerning Trump Plaza's objection to the Division conducting discovery subsequent to the close of the discovery completion date or, alternatively, that the Division's actions in conducting interviews with Trump Plaza employees subsequent to its filing its complaint was improper.

By way of an Order dated November 14, 1989, this tribunal found and concluded that the Division had failed to comply with the Prehearing Order to complete the required discovery in a timely fashion and that it failed to answer Trump Plaza's initial interrogatories in an appropriate or acceptable manner. It was further found that the Division's stonewalling tactics effectively precluded Trump Plaza from preparing its defenses and resulted in the delay of those hearing days scheduled for October 24, 26, 30 and 31, 1989. This tribunal denied Trump Plaza's motion to dismiss the instant matter without prejudice and ordered that all discovery be completed no later than December 20, 1989. As a consequence of the Division's cavalier conduct in ignoring the orders of this tribunal, by its failure to comply with discovery orders, it was necessary to again adjourn hearing dates scheduled for November 13, 16 and 17, 1989.

All delays in moving these proceedings to a conclusion are directly attributable to the Division for its failure to comply with the rules of discovery. N.J.A.C. 1:1-10.1 et seq.; New Jersey Court R. 4:10-2.

The November 14, 1989 Order also concluded that the Division's conduct in interviewing Trump Plaza employees without notice to respondent's legal counsel (or to the employee's legal counsel) was proper and permissible under section 80 of the Casino Control Act (Act). At the oral argument held on November 8, 1989, the Division consented to make the inquiry of the interviewees as to whether or not the Trump Plaza employee wished to have his/her own attorney present, respondent's attorney or, no one present.

On December 12, 1989, the Division filed a Motion for Declaratory Judgment seeking confirmation that its complaint against Trump Plaza was legally sufficient. On December 15, 1989, the Division filed its Motion to Amend its Complaint to add the charge that Trump Plaza violated the New Jersey Law Against Discrimination and

to name additional employees allegedly discriminated against by respondent. Trump Plaza brought on a Cross-Motion to Dismiss the Division's Complaint arguing that the complaint was legally insufficient and also that the Amended Complaint was duplicative. This tribunal granted the Division's Motion for Declaratory Judgment and its Motion to Amend its Complaint.

Because the Assistant Attorney General was on an extended vacation during the month of January 1990, the hearing was delayed until January 31, 1990, the first day of hearing.

The hearing was conducted January 31, February 5,6,7,8, 9 and April 23, 24 and 25, 1990. The parties requested and were granted leave to submit post hearing briefs. The last submission was received on July 2, 1990, which constitutes the closing of the hearing record in this matter.

ISSUES

The issues to be determined by this tribunal and as agreed upon by the parties are these:

A. Whether respondent Trump Plaza, by extending preferential treatment to patron Robert Libutti's gaming play, violated N.J.S.A. 5:12-134b and N.J.A.C. 19:53-1.5(a)2 through its failure to afford an equal employment opportunity to Newton Brown, Margaret Camper, Arlene Daniels, Carlton Carpenter, Louis Monroe and Gwendolyn Torian on account of their race, color or sex by failing to insure that said employees were treated, during their employment, without regard to race, color or sex.

B. Whether respondent Trump Plaza, by the actions and conduct of its employees, unlawfully discriminated against its black and female employees during the period 1987 up to and including May 1988 by removing black and female games personnel from certain job assignments solely because those employees were either black or female, in violation of New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

The Division's Amended Complaint added the following names to Issue A above: Dwain Harris and Cathy Carlino (Denise Bellamy's name was inadvertently

omitted from Issue A. in the Prehearing Order). It also alleged that Trump Plaza was in violation of N.J.S.A. 5:12-134c. in Issue A. above.

UNDISPUTED FACTS

The following facts are not disputed and, therefore, are hereby adopted as **FINDINGS OF FACT** in this matter:

Robert Libutti was a frequent patron of the Trump Plaza between May 28, 1986 through September 20, 1988 and was the catalyst of the Division's charges of racial and sexual discrimination against respondent. He was considered a premium, preferred (high roller) player by Trump Plaza which made special accommodations for him when it was known he would be appearing at the casino. Libutti generally played the game of craps. Trump Plaza would reserve a craps table for his play by roping off, generally, Pit #3, Table #3, for Libutti's use. The assigned Pit Boss would then assign the boxperson, floorperson and dealers to the pit and table.

Based upon a review of Trump Plaza records, it was demonstrated, through a Division Agent's testimony, that Libutti gambled a total of 321 days between the period May 28, 1986 and September 20, 1988. During the year 1986, Libutti played at Trump Plaza a total of 113 days with an average bet of $11,354.56. For the year 1987, he played a total of 84 days with an average bet of $13,929.52. For the period January 1 to September 20, 1988, he played 124 days with an average bet of $10,372.45.

As a consequence of the time frame set forth in the Division's Complaint, evidence is restricted to the period May 28, 1986 to and including May 1988.

Mr. Libutti was known to be abusive to people around him when he was losing at a gaming table. He was abusive to his family members, his employees, people merely passing by or watching his game and, employees at Trump Plaza. He would shout obscenities to no person in particular or to a specific person. Some of his abusive language had sexual and/or racial overtones. Libutti has been observed throwing dice into a chandelier and at the security booth. He has also been observed throwing gaming chips (value chips) in the pit and aisles of the casino floor

Craps is complicated and one of the most difficult games to deal and supervise due to number of plays that can be made at one roll of the dice, the various odds available to the players and the number of players at one game. There are at least 86 variations of odds on the craps table, with 50,000 possible plays available. The organization of the hierarchy of supervision of the craps game (as with other games as well) includes; the pit boss, floorperson, boxperson and dealers. The pit boss is in charge of all of the games in the pit which includes eight craps tables. The pit boss is responsible, among other things, for the assignment of dealers on the tables within his/her assigned pit. The pit boss observes all of the games in action within the pit and oversees credit markers used at the games.

The floorperson watches one craps game and may be called upon to settle a dispute over a call (cocked die, etc). The game may include one or two boxpersons and three dealers at one table.

The boxperson places the money bet and lost in a drop box and corrects any errors made by the dealers. The boxperson oversees the game in that the roll of the dice is done fairly and the payouts are correct. Dealers in craps consist of one stick person, one dealer at second base and one dealer at third base. The stick person must be extremely accurate with the call of the number on the dice, while dealers are responsible for the pick up of the chips on lose and pay out on wins.

The game is fast paced with as many as 16 players at one craps table, eight on each side. Wagers may be made between the time the dice leaves the shooter's hand and the time the dice come to rest (N.J.A.C. 19:47-1.3(a)). The dealers, boxperson, floorperson and pit boss must possess, among other things, the knowledge of the various odds and the skill to rapidly add, subtract and multiply mentally, without the aid of mechanical assistance, in order to calculate the odds and make the correct payout. The payouts to the winning players must be quick, precise and accurate in order for the game to resume.

During the relevant times in this matter, Trump Plaza had in place an unwritten policy whereby dual rated employees were only allowed to serve Libutti at the lower position of the dual rate.

CONTESTED FACTS

Both parties offered witnesses whose testimony is summarized hereinbelow.

Newton Brown, III, is a black male who was a craps dealer at Trump Plaza during the times relevant in the Division's complaint. He presently holds a dual rate as a boxperson/craps dealer. Brown started dealing craps while employed at the Atlantis Hotel and Casino in 1982. He is a 1975 graduate of Rutgers University with a bachelors degree in Education. He taught in the Atlantic City public school system prior to beginning his employment with the Atlantis Hotel and Casino.

Mr. Brown asserted that he has dealt high limit and fast paced games while at Trump Plaza. He asserted that he has never been pulled off of a game while employed at Trump Plaza when there has been high limit wagers or fast action games. Brown is of the opinion that he can handle himself in a game very well. He contends that his performance evaluations executed by his superiors have always been positive and his abilities as a craps dealer were never placed in question by his supervisors. He asserted that in 1986 he was tapped off a craps game and placed on another craps game where the dealer was not able to handle the action.

Mr. Brown testified with respect to his 1987 performance evaluation which, he asserts, there were all positive comments. His superiors commented about his favorable attitude toward his fellow employees and toward Trump Plaza customers Mr. Brown opined that his evaluation was "pretty good." On a total numerical score of 200, Mr. Brown scored 136 points by his supervisors.

On cross examination, Mr. Brown admitted that he had notices of unsatisfactory performance. On October 10, 1986, he was deemed unsatisfactory for a violation of the regulations when he failed to pick up a line. Subsequently, on October 25, 1986, he received an unsatisfactory performance/misconduct where he did not book a bet. In addition, in 1988, he was cited for violation of the game protection regulations. In that situation, a player placed money down after the point had been made and Mr. Brown did not detect it in time. Mr. Brown admitted on cross examination that he had been reprimanded for attendance problems. In his evaluations, dated October 13, 1986 and December 13, 1986, both of which were

signed by Brown, his job performance with regard to game protection was cited as needing improvement. The evaluation also stated that Mr. Brown starts to lose control of the game if the game becomes heavy. In addition, he was criticized for occasionally becoming abrupt with patrons. Mr. Brown admitted that he was not one of Trump Plaza's more experienced dealers and that he believed that he had the label as a troublemaker attached to him since his employment at Trump Plaza.

Mr. Brown testified that he knows Robert Libutti as a guest at the Trump Plaza Hotel who started to come to the hotel/casino in May of 1986. Brown asserted that he had heard that Libutti was not a very pleasant person. Brown dealt for Libutti for the first time late in 1986, a specific date that he could not recall. Brown asserted that he was in pit #5 on game #18 when Libutti walked upon the scene and threw money on the game. Libutti bet on a number, which hit, after which Libutti walked away. Brown asserted that in late 1986 he again dealt Libutti, however, this was in pit #3, table #3. The table was reserved for Libutti and Brown was assigned to the reserved table. Mr. Libutti had been on the table only a short time and was losing heavily, while his chauffeur was rolling the dice. Brown was the stick person when Libutti turned to his chauffeur and stated "shoot the fucking dice. Shoot the fucking dice like you were fucking some nigger." Brown, who was the only black person at the table, was agitated and upset by Libutti's comments. Brown continued to perform his duties until such time as he was relieved of the stick.

The late Steven Hyde, President of Trump Plaza approached the craps table to talk with Libutti. On cross examination, Brown testified that Libutti apologized to Mr. Hyde and then Libutti attempted to give Brown a $300 tip in chips, which Brown could not accept for performing his duties. Subsequently, Gary Massey who was the pit boss on Brown's game, stated to Brown that he did a good job in controlling his temper. Sometime thereafter, pit boss Massey awarded Brown with a commendation for a job well done.

Brown asserted that some time in mid 1987, dates which he could not recall, he again dealt Libutti in pit #5, table #17, which was reserved for Mr. Libutti. Brown asserted that he has not dealt Libutti since the 1987 event. Brown asserted that he was told by Trump Plaza personnel that Libutti did not like blacks or females on his, Libutti's, table. Brown testified that Trump Plaza employees Robert Toscano, Guy

Resnick, Frank Shapiro, Ron Gangolenski and Chris Ford were the ones which advised him that Libutti did not care for blacks or females to deal him.

Brown testified that in the latter part of 1986, he was to be assigned to pit #3, table #3. He asserted that the floorperson, Robert Toscano, advised Brown that Libutti was coming and that Libutti did not want blacks or females on his game. Brown was reassigned and assumed that the reason for his being reassigned was that Libutti did not care for blacks or females to be dealers on his game. Brown was never taken off the game while he was dealing to Libutti. He contends, moreover, that he was reassigned on at least on five different occasions, however, he could not give specific dates of those reassignments. Brown assumed that he was reassigned, more likely than not, because Libutti was on the casino floor.

On direct examination, Brown asserted that he seldom saw blacks or females on Libutti's table. He changed his testimony to state that he never saw blacks or females on Libutti's table. On cross examination, Brown asserted that every time he observed Libutti he had an all white crew. He recanted that testimony, however, on cross examination and stated that he saw Libutti with crews other than all white. He asserted that a couple of times (between two and ten times) he saw Libutti without an all white male crew which included a black male, a black female or a female on his game. Brown testified that he recalled seeing Melissa Steinberg, a white female, deal for Libutti. He also testified that he recalls observing Maria Street, a white female, deal for Libutti. Brown also testified that he saw a variety of white males reassigned from Libutti's table; Gary Noah, Paul Wisebecker, Joe Viro, and Vince LaSaso among them. Brown testified that he did not mind being reassigned away from Libutti's table. He did not complain to management nor could he assert that he was more qualified than the dealer who was reassigned and replaced him. Brown further testified on cross examination that he never heard Libutti state that Libutti did not like blacks or females.

Trump Plaza contends that Brown lacked the qualifications to handle Libutti's game, as observed by other witnesses who testified at the herein hearing. Ellen Rush, a Trump Plaza dual rate shift manager, described Brown as getting easily flustered and not being able to take criticism. Rush commented that Brown was sensitive on the issue of race, and that, although Brown was removed from Libutti's table, his removal was not racially motivated. Susan (Sue) Ciboldi, a Trump Plaza pit

boss, found Brown to be an inexperienced dealer who was not accustomed to dealing high limit action. Ciboldi stated that Brown was reassigned from Libutti's game because of Brown's lack of ability, not because of his race. John Ciafradone, a Trump Plaza pit boss, believed Brown to be inexperienced. Karen Wisher, a Trump Plaza shift manager, testified that Brown was a weak dealer. Gary Massey, a then Trump Plaza pit boss, who was in the pit on the day Libutti made the derogatory racial comment to Libutti's chauffeur in Brown's presence, asserted that Brown had only average technical ability. Massey further stated that Brown had difficulty dealing with authority and that Brown did not have a very good personality. It was Mr. Massey's opinion that Brown had a difficult time doing his job. Melissa Steinberg, a Trump Plaza pit boss who is now employed by the Taj Mahal Hotel and Casino, stated that she would not assign Brown to Libutti's table because Brown consistently made mistakes and never took the time to learn. Paul Laviollette described Brown as an extremely weak dealer who lacked the mental and physical dexterity necessary to deal Libutti.

Louis William Monroe, Jr., testified on behalf of the Division asserting, among other things, that he was hired as a dealer at Trump Plaza in May of 1984. Thereafter, he was promoted in March or April 1987 to the position of dual rate boxperson/craps dealer. Monroe, who is black, was on disability leave commencing September 1986 for a two month period as a consequence of a stabbing incident which was perpetrated by another Trump Plaza employee. Monroe asserted that he gave up the dual rate status after ten months for unfair treatment by Trump Plaza management.

With regard to Monroe's performance evaluations, in 1986/1987, he achieved a total score of 163 out of a total of 200 points. Monroe considered this to be an above average evaluation. On July 28, 1988, Monroe's evaluation for the 1987/88 year, had a total score of 153 out of 200. Monroe characterized this evaluation as "a pretty good score."

Monroe asserted that he became aware of Libutti in the latter part of 1986 when Libutti was on craps table #3 in pit #3. At the time Monroe was assigned to table #5 in pit #3, however, Monroe was pulled off of table #5 and assigned to deal Libutti on table #3.

There came a time where Monroe was involved with Libutti concerning a cocked die. Under such circumstances, the dealer is to call the cocked die without touching the die and then if there is a dispute to call the supervisor to make a determination as to the cocked die. On this occasion, Monroe called the cocked die against Libutti who objected and the supervisor was then called to call the cocked die. The supervisor made the same call as Monroe. As a consequence Libutti had Monroe removed from the table although Libutti asserted that he liked Monroe. Monroe admitted on the record that his removal from Libutti's table was not because of race but, rather, due to his call of the cocked die.

Monroe testified that he had dealt Libutti between 5 and 10 times. On one occasion in pit #5, table #17, Monroe was on second base and Libutti was on third base and again the die became cocked. A player bumped the table which did not alter the die, however, Libutti became irate. The supervisor called the cocked die against Libutti. Several days later Monroe received a call from the supervisor to reconstruct the incident at table #17. After considerable discussion, Libutti was allowed to shoot the point again.

Monroe testified that in the latter part of 1987 he noticed a change of attitude of his supervisors. He contended that when he was scheduled to pit #3, table #3, he would be removed by another dealer. Monroe asked Sue Ciboldi why he as removed from the pit #3, table #3, and Ciboldi advised Monroe that he was not good enough to deal to Libutti. Monroe asserted that he was removed, or tapped off, from Libutti's table ten times and, he asserted, that each time he was replaced by a white male dealer.

Monroe testified that he learned that Libutti had certain preferences with regard to only white males dealing his game from his co-workers in the locker room. Monroe testified that he never heard of Libutti's preferences from his supervisors nor did Libutti ever discuss his preferences with Monroe. Monroe contended that it was common knowledge among the employees as it was locker room talk. He believed that he was taken off Libutti's game because he is black.

On cross examination, Monroe testified that he was aware that Libutti did not want dual rated persons dealing his game. Monroe also admitted that he made two to three errors per hour while dealing. Although he denied ever receiving a verbal

or written warning he did, in fact, receive one on June 8, 1987 for allowing an improper bet. This notice of unsatisfactory performance asserted that Monroe pai out odds against Trump which resulted in a loss of $900 to Trump Plaza. He contended that the betting stakes on high action tables could be more costly to the casino when the dealer would make an error against the casino. He acknowledge that the knowledge of odds on the craps table was extremely important and that his performance evaluation of three (3) points out of a total of five (5) points was just average with respect to his knowledge of the odds.

Monroe testified that Libutti never made any racial slurs to him nor did he ever hear Libutti make any racial slurs to anyone. Nonetheless, Monroe considers Libutti to be a bigot because of Libutti's actions on the floor. He characterized Libutti as eccentric and superstitious.

With respect to Monroe's 5 or 10 reassignments from Libutti's table, he does not recall who reassigned him or when. Nor did he recall who replaced him, although Monroe testified that every time he was replaced, he was replaced by a white male. He admitted on the record that John Leach, a black male, dealt Libutti from early 1986 through mid 1988 and that he also observed females deal Libutti from early 1986 to mid 1988. He further admitted that no one told him that he was reassigned because he was black.

Monroe testified that he had not contacted the Division with respect to any complaint, however, the Division had contacted him with regard to its complaint Monroe further testified that he was aware of a dealer at Caesars who had received an $80,000 cash settlement with respect to a claim of discrimination. He further asserted that if the Division prevails in the instant matter, it is possible that he will initiate a suit against Trump Plaza.

Other witnesses who testified in these proceedings describe Monroe as inconsistent, having good days and bad days, is not eventempered, as a mediocre dealer, and as having a big chip on his shoulder and lacking the ability to maintain composure in a difficult situation.

Gwendolyn Torian, a black female boxperson employed at Trump Plaza, testified on behalf of the Division. She had previously worked at Caesars for two and

one half years before being employed at Trump Plaza as a craps dealer. From June 1987 until January 1988 Torian worked a total of 15 months at Trump Plaza. From January 1987 until March 1987 she was absent from duty on a maternity leave. Subsequently, from July 1987 to January 1988 she was absent from her duties on a medical leave.

Ms. Torian testified that while employed at Caesars she had dealt high action games. She is trained to deal in craps, blackjack and baccarat. She asserted that she was never taken off of a game because her supervisors did not believe she could not handle a game.

Ms. Torian testified that she has known Libutti since September 1986. She has heard negative things about Libutti, e.g., that he did not like women or blacks. She asserted that she had no problems with Libutti when she supervised his game in September 1986 when he played on table #4 in pit #3. She had no difficulty in handling his game. She testified that on another occasion in September 1986, she again acted as Libutti's boxperson. She was put on his game, and after about 20 minutes, Libutti left the game after the shift change. She asserted that she did not supervise Libutti's game again thereafter.

Ms. Torian stated that on September 14, 1984 she received a Notice of Unsatisfactory Performance, which resulted in a one day suspension for her insubordinate comments to a supervisor and conduct unbefitting a supervisor. On December 5, 1985, Torian received a Notice of Unsatisfactory Performance for arguing with her supervisor while on duty. On April 1, 1987, Torian also received a Notice of Unsatisfactory Performance for a low test score. In addition, Torian received four warnings for attendance since 1986. In her 1988 performance evaluation, Sue Ciboldi gave Ms. Torian an overall score of 137 out of a total 200 points. Torian stated that she was never taken off of a game because a supervisor believed that she could not handle the game. She also stated that when she was placed in the back pits and tables, she lost her enthusiasm for her work.

Ms. Torian testified that in April 1988, she was scheduled for table #17, in pit #5 when Jimmy Beich, a white male boxperson, tapped her out of her normal rotation and told her to go to table #21. Libutti played at table #17 while Ms. Torian had gone to table #21. When Mr. Libutti left table #17, Ms. Torian was

permitted to return to table #17. Ms. Torian testified that either in May or June of 1988, she was "running relief," which meant that she would relieve the boxperson on four different tables in pit #3, for a period of 20 minutes each. Gary Massey was the pit boss at the time and told Torian that when Libutti came to table #3, she was to "tap out" Martin Salway, a white dealer, who would be on table #7 and for Mr. Salway, rather than Torian, to go to table #3. Massey did not tell Torian why she was being reassigned. Prior to Libutti's arrival, Torian tapped out the boxperson on table #3 and, since the game was dead, she remained on table #3. Gary Massey saw her sitting on table #3 and told her that she had to leave the table because, "if Bobby Yee came in and saw me [Torian] sitting there, he would have his [Massey's] head". (2T, volume 2 page 37).

In or about June 1988, Ms. Torian testified that she was assigned to table #7, pit #3 and was scheduled to be on table #3, pit #3 at 2:00 p.m. However, Paul Laviolette told her to close table #7 and to go to the pit stand where she was reassigned to table #5. Libutti was in and he played at table #3 at the time that Torian was scheduled to be at that table. Torian asserted that she was replaced by a white male, however, she could not identify the male that replaced her. Ms. Torian saw game personnel being moved and concluded that Libutti did not want blacks or females on his game. Ms. Torian admitted that she was aware of the dual rate policy involving Libutti, that is, a dual rate could only serve Libutti in the dual rate's lower capacity.

Trump Plaza contends that Torian was consistently described by other witnesses in this matter as lacking the necessary qualifications to deal a player like Libutti. It contends that Torian simply lacked concentration on the game. It was asserted that Torian would get upset on the game and show that she was upset. It was also stated that Torian was not a very strong boxperson, lackadaisical at times and unable to reconstruct problems on the game. It was also testified that Torian was thought to be an inexperienced and a weak, or below average, boxperson from a technical point of view. She did not have enough experience to deal to a patron like Libutti; lacking the quick mental figures, as far as computing bets, as well as lacking the ability to compute rapidly enough to handle that type of pressure. It was also stated that Torian was very difficult to get along with and especially had trouble with her coworkers and at times, patrons.

Carlton Carpenter testified on behalf of the Division, asserting among other things, that he has been employed at Trump Plaza since on or about May 1, 1984 as a floorperson. He has been given the opportunity to be a pit boss at Trump Plaza, however, he has declined the offer. Carpenter has completed three years of college and has been attending the Philadelphia College of Bible for the past three years studying for the ministry. Carpenter's race is black, which is not commonly known at Trump Plaza due to his light colored skin.

Since his employment at Trump Plaza Carpenter has supervised high action craps games and games involving high rollers. He has supervised high actions games approximately two to three times per week.

During the time between May 1986 and May 1988, Carpenter has worked on the front games where the high end players are frequently placed. Carpenter deals with chip denominations between $100 to $1,000 and has dealt games with $5,000 chips approximately one dozen times.

Mr. Carpenter testified that he had his first experience with Libutti in May or June of 1986 where Carpenter acted as the floorperson for Mr. Libutti. He asserted that thereafter he performed as the floorperson for Mr. Libutti a dozen or more times. On most of those occasions, Libutti was playing at table #3, in pit #3. Carpenter became familiar with Libutti's betting pattern which he described as plain and simple. Carpenter testified that Libutti just bet large amounts of money and that his payouts were not complicated. He asserted that the most complicated thing about dealing to Libutti would be his vigorish, i.e., what Libutti had to pay to Trump Plaza to make his bets. Carpenter asserted that Libutti's game was not difficult to deal or supervise.

Carpenter did not personally have any incidents with Mr. Libutti in the twelve or so times that he supervised Libutti's games. Carpenter was never criticized by his supervisors during the times he acted as a floorperson at Libutti's game. Carpenter testified about one incident involving Libutti 's uncle, Peter Libutti. In the latter part of 1987 or in the beginning of 1988, Peter Libutti was gambling and Denise Bellamy, a black female boxperson, was tracking the action and the players chips. Peter Libutti wanted Bellamy removed from the game and Peter Libutti specifically requested that Carpenter, who was the floorperson at the time, have Bellamy

removed. Carpenter did not act upon that request. Peter Libutti then went to Robert Libutti, who was also playing at the game, and told Robert Libutti that he wanted Bellamy off his game. Ms. Bellamy was removed from the game and was replaced by a white male. Carpenter could not describe who had ordered Bellamy's removal or who had replaced her.

Carpenter testified that Peter Libutti became very angry with Carpenter because Carpenter did not honor Peter Libutti's request. Peter Libutti told Carpenter, "I want you so bad I can taste you." Carpenter thereupon stepped closer to Peter Libutti and stated, "Sir, I don't think you want to mess with me." (2T, Vol. 3, p. 59-61). Carpenter asserted that the Denise Bellamy incident occurred in late 1987 or early 1988.

Carpenter stated that in late 1987 or early 1988, he had heard rumors that Libutti wanted no blacks, females, or minorities of any sort on his game. He asserted that he was reassigned away from Libutti's table on two occasions, once by Gary Massey and once by Dante Benevenuto. He asserted that Massey told him that Libutti was coming into the casino and that the Trump Plaza management did not want any altercations. Carpenter also stated that Benevenuto asserted that management did not want any altercations, therefore, Carpenter had to move from Libutti's assigned table. Carpenter further asserted that when he was reassigned, a dozen or more times, he was replaced by a white male. Carpenter testified that on many of his reassignments he was not told by management to move, rather, he observed his name erased from the pit schedule and a white person's name placed in his former spot.

Carpenter stated on cross examination that he did not believe that he was rescheduled away from Libutti's table because of the Peter Libutti/Denise Bellamy incident. He stated that he did not believe that Trump Plaza management was aware of the incident between himself and Peter Libutti.

On cross examination Carpenter testified that he had never complained to Trump Plaza management of any alleged discrimination. He further stated that he does not like the gaming business nor the way people are treated in the casinos. Further, he dislikes working on Sundays; it bothers him and he would rather be at church on Sundays.

Carpenter testified to a couple of experiences where he's lost his temper while working on the casino floor. In one instance, a patron spat at Carpenter where Carpenter went to the player and told him that he had tissues. The patron cursed at Carpenter and said something to the effect that "I will kick your ass." The patron started to come toward Carpenter whereupon Carpenter went toward the patron. When two employees tried to restrain him, Carpenter threw the two employees onto the craps table.

Carpenter admitted that he had received a reprimand for failing to pass a test. He failed to have a passing grade of a procedures test where he received a "one", the lowest possible score in procedures. It was also demonstrated that he received a "one" in his knowledge of the limits of authority. Carpenter testified that he lost interest and motivation in upward mobility in the casino industry because of the way people were treated. He further testified that the treatment of the employees at Trump Plaza is not based upon race or sex. With respect to Libutti, Carpenter testified that Libutti's outbursts were not based on race or sex. He further testified that Libutti appears to be a perfect gentlemen when he is not playing the craps table.

Carpenter testified that there was never a time in his opinion where Libutti believed or knew that Carpenter was black. He further asserted that every time that he acted as the floorperson in Libutti's game, he was never removed, which was at least a dozen times. He further stated that he was never told by Peter Libutti or Robert Libutti that they wanted Denise Bellamy removed because of her race or sex. It was Carpenter who concluded that it was racist or sexist. He testified further there more white males removed from Libutti's game, during the game, than blacks or females.

Carpenter stated that he did not know whether or not he would file a law suit of discrimination against Trump Plaza. However, he had contacted an attorney the day before these proceedings.

Arlene F. Daniels, a black female, testified that she was formerly employed at the Trump Plaza between 1984 and February 1989 as a craps dealer. She was terminated by Trump for attendance problems. During her employment at Trump

Plaza, she asserted that she dealt high action games four out of the five days per week that she worked and that she was able to handle the action. Daniels admitted that in 1984 and 1985, she was removed from games because she could not handle the action.

Daniels score on her 1988 performance evaluation form indicated that she scored 145 points out of a total of 200 points. On a scale of 1 to 5, Daniels received four 4's and three 3's. She received nothing less than a 3 on her evaluation form. On or about May 1987, Daniels received a notice of unsatisfactory performance from her supervisors. She received the notice for failure to acknowledge the call of the dice. She asserted that all three of the games personnel on the table at the time received such a warning.

Ms. Daniels testified that it was in late 1986 that she became aware of Libutti. She testified that she had never dealt Libutti. However, she subsequently testified that she had dealt Libutti when she was the stickperson on his game.

Ms. Daniels testified that it was a known fact, not a rumor, that Libutti did not want females on his gaming tables. She related an incident in the spring of 1987 involving a friend of hers, Gloria Young, in which Daniels alleged that Libutti called Ms. Young a "cunt." She also alleged that Libutti had called John Leach a "black bastard." She contended that the whole crew, including the pit boss and floorperson, heard the comments by Libutti.

Daniels alleged that in the summer of 1988, she heard Libutti arguing with a Commission Inspector who was watching Libutti's game. She asserted that Libutti said something to the Casino Control Commission officer, to the effect, that Libutti did not want anyone standing near him. She asserted that the Commission Inspector said to Libutti that he was going to stand where he was and watch the game. Libutti was alleged to have said to the inspector "it's bad enough that I have to look at you at my home, I also have to look at you here." Daniels assumed that Libutti had black people cleaning his home.

Daniels testified that she had been scheduled on more than one occasion to deal Libutti, however, she was never assigned to his table. She asserted that the first time, she could not recall the date, she was assigned to pit #3, table #3, when pit

boss John Ciafardone rescheduled her to another table. She did not ask Ciafardone why she was rescheduled. She asserted that she was replaced by Dave Venezia, a white male. Libutti did not appear at the casino on that day.

The second time Daniels asserted that she was reassigned she was again in pit #3, table #3 when pit boss Susan Cioboldi rescheduled Daniels to another table. Libutti again did not arrive as expected. She testified that the third time she was removed and all times thereafter the pit boss was Arthur Crawford. She said that she was tapped off by a white male. She also asserted that Crawford, during one of the times she was rescheduled, told her that it was for her protection as well as Libutti's and that the reason that Daniels was being moved was because she was black. Daniels testified on direct examination that she was certain that it was Sue Cioboldi who reassigned her in 1988 because Cioboldi had just returned from a medical leave. She then countered her testimony on direct, that she was now not certain that the incident had occurred in 1988.

Daniels asserted it was common knowledge that Libutti did not want females or blacks on his table, and that this common knowledge came from pit bosses, Christopher Ford, John Ciafardone, Susan Ciboldi and Arthur Crawford Subsequently, on her direct examination, however, Daniels testified that John Leach, a male black, and David Blackwell , a male black, had dealt Libutti on a regular basis She also acknowledge that Melissa Steinburg supervised Libutti's game.

On cross examination, Daniels admitted she had attendance problems at Trump Plaza prior to her termination. She also had a written warning with respect to game protection. As a consequence, on her performance appraisal, it was indicted to Daniels that she must show immediate improvement in attendance and improvement in gaming protection. Daniels was known, and she admitted, she was a "casino gazer." In other words, she was not attentive to her business or the game at hand. It was also acknowledge that Daniels used vulgar language while on the gaming table.

Daniels acknowledged that it was preferable to have the most experienced dealers on the high roller tables. She admitted that almost one half of the house had more experience than she.

Daniels admitted Libutti did not ask that she be removed from his game when she was the stickperson for his game. Daniels also admitted that Libutti expressed no racial slurs toward her. She also admitted Libutti had never used the word "black" when he made the alleged statement to the Casino Commission Inspector. She testified she was certain that the incident with the Casino Commission Inspector occurred in 1988. However, she subsequently testified she was uncertain about the date of the incident. She further testified she was uncertain as to whether it was six or more times she was reassigned because of Libutti.

On cross examination Daniels testified she was certain that Libutti had made the statement to John Leach, "black bastard." She testified that Leach was removed from Libutti's game, however, Leach returned to deal Libutti the next day.

During the period 1987 to 1988, Daniels was assigned to pit #5 four days per week. The rest of the time was split up. Daniels admitted that table #3 is not in pit #5 and that table #3 was Libutti's favorite craps table. Daniels admits, therefore, that she could not have been reassigned from Libutti's table during this period of time. She asserted that she was rescheduled six times, moreover, three of those six times could have been after June 1988.

Daniels testified she knew of the Caesars matter and knows the individual who received the monetary award. She asserted that she had not employed legal counsel, however, several other employees have consulted with a lawyer as a group She testified that she wants to see Trump Plaza punished.

Daniels completed her cross examination by asserting she did not want to deal Libutti even if given the choice.

Dwain Harris, a black male, testified for the Division and asserted, among other things, that he had been employed at Trump Plaza since May of 1984. He is presently on medical disability as of January 1990. His employment background with Trump Plaza demonstrated that he has been a craps dealer from May 1984 until the spring of 1988. He asserted that he was promoted to a dual rate boxperson/craps dealer in March 1987. Subsequently, in May of 1988, he was promoted to a full time boxperson. He asserted that he has dealt high action and high stakes craps games prior to June 1988. He asserted he dealt such games two to three times per week

where he would manage chips of $500 to $1,000. He testified he never dealt $5,000 chips, however, he has supervised such games.

He testified that for the first six or seven months he was a dealer he was pulled from the game for being inexperienced. In his prior sworn statement, however, Harris indicated that he had been pulled off of games as a consequence of his inexperience after the first 12 months of his employment at Trump Plaza rather than just six months. He asserted he had not been pulled from any games for inexperience since that time.

In his 1985 performance evaluation, Harris received a comment that his game pace was a little slow. Therein, the evaluation demonstrated that he did a fine job, however, he must work on his game pace. In June of 1985 he was also alerted to the development of his accuracy. In his June 29, 1987 dealer evaluation, Harris received a score of 150 out of a total score of 200, which he classified as average to above average. In or about of December of 1988, Harris' floorperson/boxperson performance evaluation form indicated a score of 113 out of a total of 200 points; this was classified as a low score. The record also indicates that Harris had some attendance problems in 1987 and 1988.

Harris asserted that he first learned of Libutti as a player in the fall of 1986. He testified that the first time he was removed from a Libutti game was when he was assigned to table #3, in pit #3. He asserted that a phone call came to the pit with the information that a high roller was coming and that the player did not want blacks or females on the table. Harris asserted he was told by the pit boss that he had to be replaced and the reassignment was based upon gender and race. He contended the female floorperson who moved him on this occasion was also removed from the game. Harris stated he was replaced numerous times thereafter and that he was rescheduled before the game opened or that he was tapped off from the game if it was known that Libutti was coming to the casino.

Harris asserted that he was rescheduled at least three times toward the end of 1986. However, he could not specify any dates in which he was rescheduled. He asserted that he was off duty on Wednesdays and Thursdays, and on all other days he was scheduled to work pit #3, table #3. During the period in 1987, Harris could not recall the dates on which he was rescheduled. He asserted, moreover, that he

was rescheduled on at least ten times, which averaged once per month. He stated he did not question his supervisors for the reasons for his reassignments. However, was a known fact Libutti did not care for blacks or females on his table, because the fact was discussed among the casino employees. Harris admitted on direct examination, that he had never heard Libutti request an all white male crew. Harris asserted, moreover that he had heard Libutti state that he did not want "dames" on his game. Harris asserted that when female game personnel were assigned to Libutti's game, Libutti would call out obscenities.

On cross examination, Harris testified among other things, that he did not recall the name of the floorperson who told him that Libutti did not like blacks or females on his game. Harris asserted it was common knowledge discussed in the employees lounge. Harris further testified that he did not know how many times he was reassigned. However, he stated in his sworn statement that it was 12 times he was reassigned while at the hearing he stated it was 14 to 15 times he was reassigned. Harris asserted further that he never asked why he was reassigned, but relied upon his own experience and what he had learned in the dealers lounge. Harris further testified that Libutti never made any racial slurs in Harris' presence.

Harris asserted that he never saw a black deal Libutti and never saw a female floorperson or a female boxperson. He testified that he believed it was a female floorperson who was the target of Libutti's obscenities, however, it could have been a pit boss. The female was not removed from Libutti's game.

Trump Plaza observes that on cross examination that Harris admitted he did not know the dates he was reassigned or even the names of the pit bosses who reassigned him. Harris claimed he knew of Mr. Libutti's preferences solely based on rumor and observation. Harris was not aware that John Leach, Richard Holmes or Everton Clark, all black males, serviced Libutti's game.

Trump Plaza contends that Harris' testimony was often contradictory. On direct examination he said he might have been at Libutti's table after May 1988, but in his sworn statement to the Division he stated that he had never dealt Libutti Harris claimed on direct that during his first six months he was reassigned for inexperience, however, in his sworn statement he stated that the period was not six but 12 months. On cross examination, Harris admitted that he had consulted with an

attorney regarding a civil suit against Trump Plaza. He asserted that he would have filed one, but did not do so, due solely to the statute of limitation problems.

Trump Plaza further observes the testimony of other witnesses, where it was demonstrated that Harris lacked the qualifications to interact with Libutti. He lacked the ability and made mistakes. He was thought to be inexperienced and weak as a dealer.

Denise Bellamy, a black female, testified on behalf of the Division asserting that she had started her employment with Trump Plaza on May 2, 1984 as a permanent boxperson. Her prior experience was at Caesars Hotel and Casino beginning May of 1979 as a soft and hard count supervisor. In 1981 she became a craps dealer at Caesars.

Ms. Bellamy's supervisors encouraged her to seek the position of floorperson at Trump Plaza, however, she declined the offer for personal reasons. She asserted that she is divorced, the mother of a young daughter, and that the increase in salary for dual floorperson at Trump Plaza was not significant. These were the reasons she did not seek the promotion.

Ms. Bellamy stated that craps is a fast action game with large numbers of people betting a great deal of money. Her position as a boxperson was to oversee the game and to assure that the patrons were serviced properly. In so doing, she was to make certain that the dealers worked in a professional manner and that she was to rate patrons and also to evaluate the patrons for comps. As a boxperson on high action games, Ms. Bellamy often handled $1,000 chips on a daily basis and occasionally $5,000 chips. She asserted that she was never told by any supervisor that she could not handle high action or high limit games. She stated that it was more difficult to supervise low limit games because you have patrons betting between $5 and $1,000 with all types of bets.

In her December 1988 performance evaluation as a floorperson/boxperson, Bellamy received a score of 149 points out of a total of 200 points. In her 1987 performance evaluation as a floorperson/boxperson Bellamy received 141 points out of 200 points. She opined that these were "good" evaluations. She asserted she had never received a written notice of unsatisfactory performance.

Ms. Bellamy testified that she first learned of Libutti in 1986 when she acted as a boxperson for Libutti approximately five times. These occurred on a couple of occasions in pit #3, table #4 and a couple of occasions in pit #3, table #5. She asserted that Libutti's betting patterns were simple and the payments were not difficult.

In 1987, Bellamy acted as a boxperson for Libutti on two occasions. The first time was in pit #5, table #17, where she was sitting "double box" with Dante Benevenuto. She explained that in a double box situation an extra boxperson is in the pit to assist the first boxperson. Bellamy testified the pit boss asked her to stand up, after which the pit boss stated to Bellamy that Libutti did not want any blacks on his game. The pit boss asked Bellamy not to take it personally, however, she was removed from the game. She asserted she had never been removed from a game because of sex or race and that she was hurt and embarrassed over this situation.

Sometime after this situation, Bellamy was assigned to pit #3, and table #3 with the floorperson Carl Carpenter and the pit boss Sue Cioboldi. Bellamy was performing as a double boxperson for Libutti. Bellamy testified she heard Peter Libutti, Robert Libutti's uncle, state "I want that bitch off the table and I want her out of here." She observed Robert Libutti call Carpenter over to where Libutti was standing, however, she did not hear their conversation. She then observed Carpenter approach Sue Cioboldi after which Sue Cioboldi told Bellamy to leave the game. Cioboldi did not tell Bellamy why she was removed from the game nor did Bellamy ask why she was removed. She testified she was never again scheduled for Libutti's game thereafter.

Bellamy asserted that she talked with co-workers about Libutti's alleged preferences which included floorpersons and pit bosses. They talked about Libutti's alleged preferences and joked about it where Bellamy understood that Libutti did not want blacks or females on his game. She testified, on direct examination, that she never heard Libutti say he did not want blacks or females on his game. Bellamy was subsequently assigned by Gary Massey to pit #5 where Massey asked her to work on Libutti's game, however, Bellamy refused to do so.

On cross examination Trump Plaza observed that Bellamy claimed that the best crews were not always assigned to Libutti's game. However, in her sworn statement Bellamy asserted that only the better dealers, boxpersons and floorpersons were assigned to Libutti's game. On cross examination she stated that she considered herself above average or one of the better boxpersons employed at Trump Plaza at the time.

On cross examination Bellamy admitted there was an incident between the first and second occasions when she was removed from Libutti's game where she had a confrontation with Peter Libutti over a $50 bet. Robert Libutti was not at the table at the time, however, Peter Libutti became extremely angry. Bellamy acknowledged that this incident with Peter Libutti could have been the cause of her removal from Libutti's game on the second occasion. She could not state with any certainty that her removal from this game was because she was black or female.

On cross examination, Bellamy asserted she never heard from pit bosses, or persons with rank above pit boss, about Libutti's alleged preferences. She also stated she never heard Libutti state that he did not care for blacks or females on his game. She also stated that blacks and females dealt Libutti's game early in 1987 to 1988 including Monroe, Leach, Clark, Steinberg, Street and two other females, one white and one Hispanic. Bellamy also admitted that, at the time, she was the only black female boxperson. She further admitted that her source of information concerning Libutti's preferences was by the way of rumor and talk with her fellow workers.

Catherine Carlino, included in the Division's amended complaint, testified on behalf of the Division. She commenced employment with Trump Plaza as a floorperson in craps in the spring of 1984. She is also qualified as a boxperson. Carlino holds key licenses in blackjack, craps, and recently completed the requirements for baccarat. She asserted that she worked at Caesars for five years before coming to Trump Plaza where, as a dealer, she was promoted to dual rate floorperson/boxperson. Her work at Caesars involved high action and high limit games where she where she handled $5,000 chips.

She testified with regard to her employee performance appraisal at Trump Plaza for the 1984 year wherein she was rated on a range between 6 and 8 on a scale

of 0 to 10. She opined that this was a good evaluation. On her 1985 supervisory annual performance review, Carlino did not sign the document because she believe it was discriminatory and could jeopardize her future in the gaming industry. She believed she was treated unfairly by her evaluators because she is a woman. On her floorperson/boxperson evaluation form for 1987, Carlino received comments calling her technical skills, without question, excellent. The evaluation also indicated she showed improvement in handling situations, but she lacks the diplomacy in dealing with others and was asked to improve to an even temperament. Carlino received a commendation from Trump Plaza for administering CPR to a heart attach victim. She also received a score a 99 out of 100 on a procedures test.

Ms. Carlino first became aware of Libutti late in 1986 when she was the floorperson on his game at pit #3, table #3. She recalled that she was the floorperson on his game from approximately 1:30 pm. until 5:45 p.m. where he bet a great deal of money. She asserted there were no problems and there was nothing unusual about the game. She testified she subsequently was the floorperson on Libutti's game three to five times and a few times in 1986, 1987 and 1988. She described Libutti as a fairly simple player and that his action was not difficult to supervise.

She testified concerning one incident where Libutti was yelling and screaming that he did not want women on his game. Ms. Carlino testified that she was not removed from the game and that this incident occurred late in 1987.

Ms. Carlino testified that she was not scheduled thereafter to be the floorperson for Libutti's games. She testified she believed she was rescheduled away from Libutti's game at least eight times from late 1987 until June of 1988. She contended that during those times she believed she was rescheduled away from Mr. Libutti's game she was replaced by white males; i.e., Guy Renzi, Mike Scardina, Billy Schillingford and John Brown.

Ms. Carlino asserted the first time she believed she was rescheduled from Libutti's game was when she was in pit #5, game #18. She asserted that the normal rotation would have been for her to go to pit #3, table #3. When she arrived at pit #3, pit boss Gary Massey told her she would be going to game #6 instead of pit #3, table #3. She inquired of Massey as to the reason she was being reassigned

Whereupon, she testified, Massey told her that Mr. Libutti would be arriving and Libutti did not want women on his game. Ms. Carlino testified she was replaced by Guy Renzi.

A few weeks after this first incident of rescheduling, Carlino was scheduled to go to pit #3, game 3, when the floorperson told her to go to game #6. She asked the pit boss, John Ciafardone, why she was going to game #6 and, she testified, that Ciafardone told her because "that's where I assigned you and we have the right to reassign you if we want to." Carlino asked Ciafardone if she was being rescheduled because Libutti did not like women. Ciafardone did not answer Carlino.

Ms. Carlino testified that she also questioned dual rate pit boss/shift manager Louis Gutierrez in late 1987 concerning Libutti's alleged preferences. She asserted that Mr. Gutierrez told her that Libutti did not want women or blacks on his game. She asserted she stopped questioning her reassignments because she did not want to make waves.

Carlino asserted that she personally observed Libutti as a very hostile person where she saw him throwing gaming chips valued at $100 each. She also observed Libutti throw a die into a chandelier. She observed him screaming, yelling and cursing and that he was like a child having a temper tantrum.

Ms. Carlino testified that she had brought an equal employment opportunity (EEOC) grievance against the management of Trump Plaza and that Libutti and his activities were mentioned as one of the aspects in her grievance. She contended that the grievance had not been resolved as of the time of the hearing.

Trump Plaza observes that, on cross examination, Ms. Carlino's performance evaluations demonstrated that she needed improvement with her temperament and she lacked tact and diplomacy. Trump Plaza also observes that despite Carlino's claim on direct examination that Libutti was one of the reasons she filed EEOC grievance, that in fact Libutti's name was never mentioned in the grievance. On direct examination, Carlino stated she had received no response or action with regard to her grievance. However, on cross examination she admitted that on October 19, 1989, she had a meeting with Sandy Rodriquez of Trump Plaza, specifically with regard to the grievance.

Ms. Carlino admitted on cross examination that she had acquired the reputation and nickname as "the colonel." The nickname, the colonel, was applied to her by employees and patrons alike and was a consequence of her inflexibility with respect to the rules of procedure. She was seen as being extremely strict.

On cross examination Ms. Carlino asserted that she did not recall any blacks or females, deal, box or floor Libutti between 1986 and 1988. The record notes however, that she was the floorperson for him during this period. She did not see Melissa Steinberg on Libutti's table; she did not recall seeing Ms. Street on Libutti's table nor did she recall Carman Degas on Libutti's table during this time period. She also asserted she did not recall seeing any black males on Libutti's table. She did not see or observe John Leach on Libutti's table, Everton Clark, or Mr. Holmes during this period.

Ms. Carlino testified that she was turned down for the position of dual rate floorperson/pit boss promotion. She asserted that she was extremely upset at the time. It is also observed that Carlino was on leave of absence between January and March of 1989 and she was not assigned or reassigned to any table during that period.

Paul Laviolette, a white male, testified on behalf of the Division. Prior to 1986, Laviolette held a triple rate as a boxperson, floorperson, and pit boss. In 1986, he became a dual rated floorperson and pit boss. Laviolette has had 26-1/2 years experience in the casino industry.

In or about January 1985 he was terminated from the Sands Hotel and Casino for his failure to support management. He contended that the then new Sands management had changed some policies which he believed were detrimental to employee moral. He attempted to have the policies changed and apparently management believed he was not supporting it. Laviolette subsequently learned that the Sands had fired him for incompetence.

Laviolette testified he became a pit boss at Trump Plaza in 1988, and part of his duties and responsibilities was to supervise eight tables and all of the personnel in the pit. In addition, he was to schedule personnel. Laviolette testified that he

never scheduled Libutti's game. He did testify that he had the opportunity on one, or possibly two, occasions to give the pit boss assigned to Libutti 30 minute breaks. On those occasions, he testified that Libutti never made a request of him to have white male dealers at his gaming table.

Laviolette testified that after Libutti's third visit to the Trump Plaza he became aware of a directive made by an unidentified individual whom he suggested was either a pit boss, an assistant shift manager or a shift manager that he, Laviolette, was not to put blacks or females on Libutti's games. He asserted that this directive was oral and was made to him sometime in 1986. He also asserted that management, through the late Steven Hyde then president of Trump Plaza, ordered that only full time personnel be assigned to Libutti's game. This meant that dual rated persons were only to be assigned to their lower rating while dealing Libutti.

Laviolette testified that he never saw a black person deal, box, or supervise a Libutti game during the 1986-88 period. He stated that he did not discuss the alleged directive with respect to not assigning blacks or females to Libutti's table with his peers or other pit bosses. However, he heard conversations in the cafeteria and overheard pit bosses discussing Libutti's preferences. He admitted that there is a great deal of gossiping that goes on in the casino industry where individuals react to events which occur on the casino floor. He testified that rumors get blown out of proportion and even may not be true. He asserted that in some instances, it is very difficult to distinguish the difference between rumor and fact in the casino industry

On cross examination Laviolette testified, among other things, that Libutti was an unusual patron, however, Laviolette had never seen Libutti pick on any particular race or sex. While Laviolette testified at this hearing that he never saw a minority on Libutti's table, in his statement to the Division he asserted that he had seen minorities on Libutti's game.

Laviolette testified that in his opinion the most qualified craps dealers on the day shift during the time period May 1986 to June 1986 were all white males Laviolette further testified with respect to his opinion about certain Trump Plaza employees and whether or not he would assign them to Libutti's table, as follows

Denise Bellamy - Laviolette knows her and would not assign her to Libutti's table. He stated that she does not have the mental and physical dexterity necessary to deal Mr. Libutti nor does she have the ability to handle the size of his wagers and she cannot complete the payoffs rapidly enough to be able to satisfy Libutti's play. He also opined that Bellamy was a weak dealer.

Gwendolyn Torian - Laviolette opined that she was also a very weak dealer due, perhaps, to her lack of experience. He further asserted that she does not have the ability to compute rapidly enough to handle Libutti's type of pressure. Laviolette further testified that he had never heard anyone tell Torian that she was being removed from a table because she was a female.

Newton Brown - Laviolette testified that he would not assign Brown to Mr. Libutti's game because he does not have the mental and physical dexterity necessary to deal Mr. Libutti. He contended that Brown was an extremely weak dealer and only recently had begun to show improvement in his capacity.

Louis Monroe - Laviolette testified that Monroe does have some talent as a dealer but lacks the ability to maintain composure in difficult situations.

Arlene Daniels - Laviolette testified that although it was his understanding that Daniels is no longer employed at Trump Plaza, he would not assign her to Libutti's table because she does not have sufficient experience nor the mental capacities to deal his game.

Catherine Carlino - He stated he would not assign her to Libutti's game because she becomes easily flustered.

Dwain Harris - Laviolette asserted that he would not put Harris on Libutti's game because he would be gambling on his ability to handle it.

Carl Carpenter - Laviolette understood that Carpenter was a supervisor and he had only known him as a supervisor. Laviolette had no opinion as to Carpenter's ability as a dealer. Laviolette stated that his earliest recollections with respect to Carpenter was that he had not supervised very long and, on several occasions, Laviolette noted that Carpenter allowed erroneous payoffs to take place under his supervision. In view of that, Laviolette would not allow Carpenter on Libutti's game.

Laviolette testified that for these reasons, if any of the above employees had ever been removed or reassigned from Libutti's game during the period of May 1986 to May 1988, it certainly was not based upon race or sex. Rather, the removal could have been for their inability to handle the game.

Melissa Steinberg, a white female, was called by and testified on behalf of Trump Plaza. Ms. Steinberg was employed by Trump Plaza from the period May 1984 until October 1989 where she then went to the Trump Taj Mahal Hotel and Casino where she is serving as a pit boss. She testified with respect to her promotions while at Trump Plaza. In any event, she was initially hired at Trump Plaza as a dealer and subsequently promoted to the position of dual rate floorperson prior to May 1988.

Ms. Steinberg described the game of craps by using a mock up of a craps table illustrating the various bets that can be made by the patrons and the odds on each of those bets. Ms. Steinberg also demonstrated the positions of the dealers; i.e., the stickperson, second base, third base, boxperson, and floorperson. She described the functions of each of the employees at the craps table asserting, that craps is an extremely complicated game with over 50,000 possible bets. She demonstrated that eight patrons could be stationed on each side of the craps table allowing for 16 players at one time; all of whom could participate in the betting on a single roll of the dice. She asserted that there were 86 varieties of odds at any table and that betting by the patrons or the dice thrower may be made while the dice are in the air and before they strike the table. Ms. Steinberg's description of the various plays and the various odds shall not be recited here.

Ms. Steinberg testified that it takes at least one year to learn the game of craps. She asserted even after such a lengthy learning period some people never

become proficient with the game. She described the attributes necessary for a craps dealer as follows: The individual must be able to handle stress, a quick tempe should never be on the game of craps. The craps dealer must have the basic tools of addition, subtraction and multiplication and be able to figure the payouts rapidly. There are so many odds and so many different combinations of bets that mistakes are made on payouts due to the individuals lack of the basic tools of addition, subtraction and multiplication. She also stated that the individual craps dealer must have the ability to get along with patrons because the attitude of the dealer is extremely important. And, of course, knowledge of the job is extremely important in handling the chips because everything is open and must be seen. The craps dealer must verbalize every bet in clear and concise language and communicate to all the people at the table. The dealer must also know the colors of the chips because of the odds and in changing chips can complicate the payout. The knowledge of the odds is extremely important because the total payouts must be accurate and quick. She asserted that although one person cannot know everything of the game while it is being played, game protection cannot be compromised. The game pace must be rapid and ongoing. She asserted that craps is the most difficult game in the casino.

Ms. Steinberg asserted that all craps dealers are not able to deal high action or high level games. Management makes a determination to place the better dealers at the high action/high level games. Management decides what action is contemplated at a particular craps table and then dictates the crew to be assigned to that table. She contended that the higher action and the higher level of the game demanded the more proficient personnel, which include the dealers, floorperson and boxperson. Only those with high ability would be assigned to the high action, high level games.

Ms. Steinberg testified that she had had experience with high rollers and proceeded to name six such individuals. She asserted that she was always assigned to the high roller action at Trump Plaza and was always able to handle the high action which she described as $500 bets and above. She asserted that at a high action table the craps dealer would handle all denominations of chips, which made it very difficult to make payouts. Ms. Steinberg proceeded to describe the various color of chips and the maximum bet per roll and the maximum to be bet at any one time by a single player. She asserted that cutting down the chips, or she referred to them as checks, created various problems for dealers. She also described that high

rollers or those in the high action, high level games had betting patterns which could be anticipated. However, the betting patterns of these high rollers changed from time to time due to the variables in the craps game. She asserted that craps action tends to become loud and boisterous by the patrons and that not all boxpersons or dealers are able to handle the patrons outbursts because the employee may take some of the outbursts personally.

Ms. Steinberg testified she first met Libutti in 1986 when the late Steven Hyde was appointed president of Trump Plaza. She stated she had over 20 contacts with Libutti as a craps dealer and even more as a boxperson on craps games. Ms. Steinberg testified that when she served as Libutti's boxperson in 1987, Libutti talked to her about his tragic life. Among the tragedies was the death of his 30 year old son who apparently died of drug abuse. She stated that Libutti told her that losing at the gaming table was more exciting than winning; it was the only way to forget his son. Ms. Steinberg described Libutti as very intelligent before he gets his marker and that his disposition was agreeable when he was winning at the table. However, when Libutti was losing, he became extremely angry with everyone and blamed everyone for his losses. She analogized his behavior and demeanor to that of Dr. Jeckyll and Mr. Hyde. She asserted he disliked everyone when he was losing.

Ms. Steinberg opined that Mr. Libutti was inhibited around women, except when she was dealing or serving as a boxperson on his table. She also asserted that Libutti had his favorite dealers which he wished to have on his game. Libutti's favorites included, among others, Vince LaSasso, Robert Henneffer, John Leach, Maria Street, Debbie Goldstein, Carmen Vega and Melissa Steinberg. She asserted that Libutti felt comfortable with all of the above individuals. She asserted that LaSasso is a white male as is Henneffer; Leach is a black male, while Maria Street is a while female as is Debbie Goldstein, and Carmen Vega is Hispanic. She asserted that all of these individuals had technical skills for the game and could make the correct payouts. Their personalities were much the same and they made people comfortable when they were at the table.

Ms. Steinberg asserted there came a time when she was thrown off Libutti's game as was LaSasso and Henneffer a couple of times. She asserted that Libutti never had any employee thrown off his game because race or gender. She contended Libutti was more careful with blacks and females than with white males.

Libutti especially liked Steinberg on his game because she had developed a special rapport with him. She stated that on many occasions when Libutti was looking for somebody to blame for his losses or a scape goat, he would have the whole crew removed, except for her.

Ms. Steinberg stated she had heard rumors around the casino that Libutti did not like blacks or females on his game. She stated she also heard rumors about altercations involving Libutti and her which never happened on the game. She stated one day she went to the breakroom and people were talking about Steinberg dealing to Libutti and that Libutti had called her the "C" word. Steinberg asserted that it never happened, however, all of the employees were talking about the situation and calling Steinberg this word. Ms. Steinberg stated there were rumors in the lounge, or breakroom, among the employees all of the time and that a great deal of the time the rumors turned out not to be true. She stated there was a time when she was in the breakroom where it was rumored that she was having an affair with Robert Libutti. She stated it was absurd, however, everyone believed it to be true.

Steinberg testified that Trump Plaza management placed the best employees on Libutti's table. She asserted that Libutti plays upon mistakes made by dealers and if one mistake is made, he will use that against the dealer. By of illustration, Steinberg testified as follows:

> I'll just give you an experience that I had as a dealer with him. He was throwing in money while I was dealing and he was throwing the dice at the same time and pressing his bets. At the time, he has a maximum of $10,000 and there are two ways to get to the number. He also has a maximum on the hard ways which is three times the players maximum.
>
> So if he's got a $10,00 maximum, he could get a payoff on the proposition area of $30,000. He was throwing in a bet. Now, me, as a dealer, had to book that bet; also make sure that that bet was right, that I call out the right amount. That it was clear and that it wasn't over his maximums because when you make a mistake with Mr. Libutti, he plays upon it. If you make one mistake, he uses it against everybody one mistake. Once he sees you fall, when he's in this irate stage, he plays upon it. (TR. Feb. 9, 1990, pp. 179-180).

Ms. Steinberg testified that when Libutti started to lose, he changed his betting pattern. She asserted that he would roll the dice and while the dice were in the air, before they had struck the table, he would change his bets. She asserted that Libutti only use orange chips and that the purple chips were not allowed on his table as a consequence of his superstition. He would use black chips in place of purple chips which could confuse the dealer in determining the odds and making a payout. She stated as time went on there was nothing typical about Mr. Libutti. By way of illustration Ms. Steinberg testified as follows:

> There was no typical any more. There was nothing that was typical with Mr. Libutti. He had changed completely. He went from not using the black anymore and he's going to use the orange, and put eight blacks on there. Now we got to figure out the odds, what he's allowed to take in, true double odds, whatever the point comes out to. Now I got to utilize my brain because there are different odds you can take with different amounts of money on the pass line.
>
> Nothing is just cut and dry. Where, alright, I have $1800. I'm going to double that and give him -- his allowed to take $3,600 odds. Especially on the 6 and the 8, you have to go to single odds and double it. So you have to memorize a lot of things. Now he's got this...one orange... I'm sorry. So you have $1,900 here. Now he's...now I have to tell him what odds he's allowed to take...from his maximum odds because he can only go up to a certain amount on his odds. Now the point is 4. And he wants to buy this for $10,000. No, not $10,000. I'm sorry. He starts with $2,000 which is different. Then while he's throwing the dice, he says, I want to put another $1,000 on it and throws it on there. Now my job is to say bet $1,000 more, press on the buy number. Then he throws $3,000 more, then he says, take it off the pass line and put it on the number. Where it's marked up on the 4. He says take this off, because now he feels like this is unlucky being on the pass line. Take this off and put it over there. Me, as the dealer, I'm getting fried and I'm trying real hard not to break. And it's real difficult.
>
> Now he's taking this number that is over here and he wants it down and now I have to give him --not only do I have to take this down, I have to give him back his vig that he paid for it, the vig, because he get's it back, when he takes it down. Now when I give it to him, he throws it back at me and telling me to place the six. This was common. Money was all over the layout. I was actually scrambling to get every single check up so a die wouldn't

> land on it. Because he would complain if there was an obstruction (TR. Feb. 9, 1990, pp. 192-194).

Ms. Steinberg testified that no one was more difficult to deal than Libutti.

In January 1988, Libutti had Steinberg removed from his table. It was a night that Mike Tyson was boxing at the Trump Plaza. She stated she was working the swing shift and had come in early, around 6:30 in the evening. She sat in on Libutti's game after the day shift. She asserted it was around 7:20 in the evening when the day shift was closing out the game, Libutti was beating (winning) the day shift for about $500,000. She stated the swing shift was now present and he's walking up with $500,000 worth of checks. Libutti then started winning what she believed to be another $100,000 on the swing shift. She believed he must have been up to $600,000 in winnings which included $500,000 for the day shift and another $100,000 for the swing shift. She stated that Libutti did a complete turn around and blew back (lost) the $600,000; the $500,000 he won on the day shift and the $100,000 that he was winning on the swing shift, plus some more of his money. Ms. Steinberg asserted that Libutti then became irate and looked at her, and she knew it was over. Ms. Steinberg asserted that she walked away and she heard Libutti say something about "I don't want the Jew on the table anymore. She's bringing me back luck." And from then on, she asserted, Libutti would always say hello to her and be very cordial but she never sat on his game again thereafter.

Ms. Steinberg testified as to certain employees that were typically assigned to Libutti's crew. She gave the following assessments:

> Richard Holmes, a black man who served as a boxperson for Libutti in 1986. She described John Leach as a good dealer with sound technical skills. She described Vince LaSasso as excellent with people, excellent with peers and excellent with payouts. She asserted that Robert Henneffer was a very strong individual who knows every payout. She asserted that Hennefer very rarely makes a mistake and that he knows how to handle people very well. She asserted that Maria Street was more on the quiet side but she's very good. Street handles people very well. Street was a boxperson during this period. She described Debbie Goldstein as one who tends to get flustered. Goldstein tended to run

out of patience, but she had very strong technical skills. She described Carmen Vega, a Hispanic female, as very, very good.

In her description of others she described them as follows:

Arlene Daniels - Steinberg used to work with Daniels as a dealer and then they were both promoted to dual rate box status which means dealer/supervisor. Daniels was at a meeting one day and every word out of her mouth was "f---ing." However, she was promoted to a boxperson. When asked to comment on Daniels abilities, Steinberg responded about her lack of. "I don't think she has any." Steinberg asserted that Daniels has actually been dealing the game without knowing what she is doing, that she just deals the game. It is something that has become very routine to Daniels. Any bet that is placed in front of her that is out of the ordinary Daniels would not have an answer when asked. Steinberg described Daniels as very mechanical. She also asserted that Daniels had a terrible attitude, she is abrupt and uses a lot of vulgarity. Ms. Steinberg asserted that she would absolutely not assign Arlene Daniels to Libutti's table.

Cathy Carlino - Ms. Steinberg worked under Carlino as a dealer and as a subordinate. Subsequently she worked as a boxperson and then as a floorperson with Carlino and then as a dual rated pit boss. Ms. Steinberg stated that Carlino's technical skills are sound and that she's very good and she gets her numbers out. She asserted that Carlino was very devious and she makes a person feel very, very small and intimidated with her words. She described Carlino as being one sided and there's only Carlino's side of a debate. A person is never allowed to talk to her about something when she makes a statement, that's all there is to it. Steinberg asserted that Carlino treated players exactly the way she treated her subordinates and that there was no room for discussion. Steinberg stated that she would not assign Carlino to any game.

Ms. Steinberg testified that in August of 1989, she was promoted about two weeks before this matter was initiated and that Carlino was very

irate about the fact that Steinberg was promoted over Carlino. Steinberg asserted that Carlino talked to one of Steinberg's girlfriends and said, to the effect, that Carlino was going to fix their (Trump Plaza's) wagon with the Libutti trial. Ms. Steinberg identified her girlfriend as Sue Rutledge, a boxperson at Trump Plaza at the time. Steinberg also stated that Joe Morrel also told her that he had heard Carlino state that she would get even with Trump Plaza.

Denise Bellamy - Ms. Steinberg stated that Bellamy was a boxperson to Steinberg when Steinberg was a dealer and that Bellamy was also a subordinate and a peer. With regard to Bellamy's ability, Steinberg asserted that Bellamy was pretty sound. She's got the answer, however, she's generally intimidated and she does not like to be in a situation where confrontation could arise because she over reacts to it. Steinberg asserted that Bellamy has already made it clear that she did not want to be anywhere near Libutti's game.

Louis Monroe - Steinberg asserted that at one point Monroe was a very good dealer. However, for some reason something happened and he seemed to have a chip on his shoulder. She asserted Monroe believed that everybody was after him, whether it was a player, a peer, supervisor or a friend, it did not matter. Steinberg stated that in the beginning she would have assigned him to Libutti's game; towards the end, however, when Monroe's personality definitely changed and it was so apparent, Steinberg stated that she would not assign him to Libutti's game.

Dwain Harris - Steinberg stated she was the boxperson and Harris' pit boss/floorperson. Steinberg observed that he has no input in the game. Harris just watches the game, and he gets paid. Steinberg stated that she saw him make mistakes on the game and directed the payoff wrong when she was the pit boss and that she intervened between the floorperson and Harris. She stated she would absolutely not assign Harris to any of Libutti's games.

Newton Brown - Ms. Steinberg asserted that he is strange, to say the least. She asserted that Brown believed that he is an excellent dealer, however, he has never stopped to learn the game. She stated that because he is too busy thinking that he's good he makes a ton of mistakes, constantly, one after the other and he continues to make the same mistakes. She asserted she would not assign Brown to Libutti's game.

Gwendolyn Torian - Ms. Steinberg stated that Torian was a boxperson when Steinberg was a dealer. Torian was Steinberg's supervisor and Steinberg testified that when you are a break-in dealer, you depend upon your supervisor to teach you the game and to help you get the right payoff. Everytime Steinberg would look to Torian for an answer, Torian never had the answer because she was not watching the game. Steinberg would absolutely not assign Torian to a Libutti game.

Carl Carpenter - Steinberg asserted that she liked Carpenter very much. Steinberg stated that he was an excellent supervisor and she learned a great deal from him. She asserted that during this period Carpenter was going through a difficult time with his wife and that Carpenter's attitude had completely changed. She stated that Carpenter had advised Steinberg that he was interested in getting out of the casino business and suggested that he might be going to Las Vegas. He also stated to Steinberg that he was going to voice his opposition toward Trump Plaza at every opportunity.

Ms. Steinberg stated that Arlene Daniels, Cathy Carlino, Denise Bellamy, Louis Monroe, Dwain Harris, Newton Brown, Gwendolyn Torian, and Carl Carpenter all have been passed over for promotions and that they each asserted they were going to get even with Trump Plaza.

John J. Leach, Jr., a black male, testified on behalf of Trump Plaza, asserting, among other things, that he is presently employed as a pit boss. He testified as to his rapid promotions over a five year period while employed at Trump Plaza. Leach testified that he is very professional in his games. This is his career, for which he has studied hard to achieve the recognition that he presently holds. He stated that he

began his career in the casino industry dealing in craps. With the passage of time, he has now learned all of the games.

Mr. Leach is quite familiar with craps and asserts that it is a complex game with numerous odds and crossbets. He asserted there are 92 different ways to bet by one individual and when you have a maximum of 16 people on one game, it becomes even more complex.

Mr. Leach asserted he was familiar with Libutti and had dealt Libutti in excess of 20 times and had supervised his game of craps. He first dealt Libutti in 1986. He asserted that Libutti is a high roller. Leach described a high roller as minimum bets of $1,000 to $10,000 and bets that can be as high as $100,000 on one roll. He saw Libutti bet $40,000 on one roll. He asserted that Libutti's bet was generally simple where Libutti would bet the 4's and 10's; then the 6 and 8; and then the 5's and 9's. Leach asserted that after a while Libutti's betting pattern changed.

Mr. Leach described Libutti's personality as follows; if Libutti was winning he was calm and friendly. However, when Libutti started to lose, Libutti was beside himself. Libutti would scream, yell, become profane, throw betting chips and generally become abusive. Libutti was abusive to his body guard, his chauffeur, his friends and the dealers. Leach testified that Libutti's behavior and abusiveness was not directed at any race, sex or nationality. He further asserted that Libutti did not express a preference of gaming personnel.

Leach testified that he was not aware that Libutti had his favorites of gaming personnel on his games. He heard of rumors that Libutti did not want females or blacks. Leach was not told this by his supervisors of Libutti's alleged preferences, rather, he had heard it as rumors on the gaming floor. Leach stated that between the period 1986 and May 1988 he recalled that Louis Monroe, a black male, dealt Libutti. He further testified that he had seen Denise Bellamy, a black female as the boxperson on Libutti's game. He also stated that Carl Carpenter, a black male, was the floorperson on Libutti's game as was Melissa Steinberg, a white female, deal on his game.

Mr. Leach asserted that Libutti was highly superstitious. He testified that Libutti requested that dealers, floorpersons and/or boxpersons be removed from his

game to change the luck of his game because of his superstitions. Leach asserted that Libutti's request to remove these people was because of his superstition and not because of race or sex.

Mr. Leach testified that the pit boss would take the best crew and move it to Libutti's table. The crew generally was very customer oriented. Libutti's crew had an indepth understanding of the game because of the rapid pace of the game with Libutti. Leach asserted the crew must know the game very well in order to service Libutti. Leach asserted there were certain individuals who asked not to be placed on Libutti's game. He asserted that Libutti occasionally received an all white crew because they were the best dealers at the time; the cream of the crop.

Mr. Leach testified he was removed from Libutti's game when he was on the stick at one time. He asserted that while he was on the stick, the house took $50,000 from Libutti in 15 minutes. Libutti became frantic, hostile and used abusive language; not necessarily direct at Leach. Leach asserted there were no racial comments addressed to him by Libutti. In any event, Libutti called for the management to remove Leach from the game. Leach asserted that he would have responded to Libutti to any racial remarks Libutti would have addressed to him, however, none were addressed to Leach. The next day, Leach was called into the office and commended for his professional demeanor and commended for a job well done. Leach asserted that thereafter he dealt Libutti. Management had asked Leach if he was willing to deal Libutti and Leach agreed that he would deal the patron. Mr. Leach asserted that Mr. Libutti had never called Leach a "black bastard" as Arlene Daniels testified.

On cross examination, Leach asserted that all craps dealers do not know how to play the game of craps. He asserted that it is harder to payoff 5's and 9's from 4's and 10's. The odds of the 5's and 9's are at 5 to 7, while the odds of 4's and 10's are at 2 to 1.

Leach asserted that Libutti did not make any racial slurs when Leach was on Libutti's table. Leach does not recall what profanity was used by Libutti.

Leach further testified, on cross examination, that rumors about Libutti and Libutti's alleged preferences was heard from dealers in the dealers lounge. Leach

testified he did not hear such rumors from boxpersons or floorpersons. He also asserted he did not talk with Gwen Torian about such rumors.

Maria Street, a white female, testified on behalf of Trump Plaza. She has been employed as a craps dealer, boxperson and is presently a floorperson at Trump Plaza. She asserted she sat box for Libutti approximately 30 times. She was never removed nor replaced while sitting box on Libutti's game. She testified, moreover, that Libutti had white males removed from his game when Libutti was losing.

Ms. Street testified concerning Libutti's personality and described it as being loud, and that he did not like people to watch him gamble. She asserted he was superstitious and that he would become irate and temperamental on occasions. She stated that Libutti's personality was affected by his winning or losing. Libutti's behavior was directed mainly upon himself, although he could get angry at people walking by or at commission employees for just watching him gamble.

Street testified that Libutti had never expressed a preference of gaming personnel to her. She stated that Libutti liked Melissa Steinberg and Vince LaSasso and one other individual to work his games. Street testified she heard rumors that Libutti only wanted white males on his game. She asserted she heard this in the locker room and on the casino floor. However, no supervisor ever expressed such a statement to her. Street was aware of black males, black females and white females who served on Libutti's game. She mentioned Carlton Carpenter, John Leach, Vanessa Stone, Ellen Ruff, Carmen Vega, Joyce Herman, Sue Ciobaldi as well as Melissa Steinberg and herself. She asserted that anyone removed from Libutti's game was not removed because of race or sex. She further asserted that the white males were the best qualified dealers in this time period.

On cross examination Ms. Street testified, among other things, that Libutti was irate, loud, abusive to everyone. Street opined that he was the most abusive person she knew. She heard that Melissa Steinberg was thrown off Libutti's game and asserted that Steinberg's removal from the game by Libutti was not for the reason of her sex but, rather, because Libutti was losing at the game. She stated on cross she never heard Libutti make any sexual or racial slurs to anyone.

Gary Leon Noa, a white male, is a craps dealer at Trump Plaza and testified on its behalf. He has been in the casino industry for 10 years and he observes that his supervisors consider him to be one of the better dealers.

Noa asserted he dealt Libutti approximately 25 and 30 times between the dates of 1986 and 1988. He asserted that on one occasion he was asked to tap into table #18, where a dealer was dealing Libutti and was not able to handle the game.

Mr. Noa opined that Libutti is moody and superstitious and would attack his family before attacking a dealer. He also asserted that Libutti's behavior was not directed at any race or sex and that Libutti would have employees thrown off of his table on a whim.

Noa did hear that Libutti preferred white males as dealers. He was not told this by any of his supervisors. He observed, moreover, that Libutti requested that white male dealers be thrown off Libutti's game.

Noa testified that management attempted to put the best dealers and boxpersons on Libutti's table. He further stated that a few people did not want to be on Libutti's game. Noa admitted he was removed from Libutti's game two or three times. In 1987, he understood Libutti believed that Noa was calling too many "7 outs." Libutti yelled and screamed, however, he did not curse at Noa.

On cross examination Noa stated he had heard the rumors in the dealer's lounge that Libutti preferred white males on his game. He further asserted he did not hear about Libutti's preferences from any boxperson or pit boss. He also stated that when he dealt Libutti, there were women and blacks on Libutti's table. He further stated he did not know whether Trump Plaza had any special policy concerning Libutti.

Other witnesses presented by Trump Plaza testified much the same as the testimony set forth hereinbefore by Trump Plaza witnesses. Those include Ellen Rush, Susan Ciboldi, Richard W. Holmes, John Ciafardone, Karen Lee Wisher, Gary and Christopher Ford and Gary Massey.

FINDINGS OF FACT

Based upon the testimony and documentary evidence adduced at the hearing; and having given fair weight thereto, I **FIND** the following **FACTS** in this matter:

There is absolutely no question or doubt that Robert Libutti was afforded special privileges and considerations by management while he gambled at the Trump Plaza between May 1986 and June 1988. It is undisputed that while he was winning at the gaming tables, Libutti's behavior and demeanor was agreeable, and he behaved as a gentleman. It is further undisputed that when he was losing at the gaming table, Libutti became loud and boisterous, shouting profanities and obscenities at anyone within earshot or at no one in particular. Libutti was indiscreet with his use of profane and obscene vocabulary, shouting it in the presence of his employees, his family members, Trump Plaza employees and strangers who were Trump Plaza patrons. It mattered not to Libutti that his remarks would or could be offensive to others; i.e., females, blacks, Hispanics, or other ethnic or religious groups and individuals.

Libutti's reputation for being a high roller was well known among the Trump Plaza employees. His abusive manner towards people was equally well known Libutti's reputation, demeanor and behavior became the source of conversation, rumor and gossip among Trump Plaza employees in the dealer's lounge, the coffee shop and the cafeteria. Each of the Division's witnesses testified that it was rumor, gossip and hearsay which formed the basis of their individual understanding of Libutti's alleged preferences that he did not want blacks or females assigned to his gaming table.

None of the Trump Plaza employees who testified in this matter ever heard Libutti state that he did not want blacks or females assigned to the craps tables upon which he played. None of the employees who testified in this matter ever heard Libutti state that he wanted only white males assigned to his gaming tables.

None of the Trump Plaza black or female employees who testified in this matter complained to the Division or the Trump Plaza management that they,

individually, had been discriminated against as the result of being removed or not assigned to Libutti's gaming table. Rather, it was the Division's representatives who sought out these individual Trump Plaza employees prior to its filing its complaint against Trump Plaza with the Commission.

The record clearly demonstrates that at all times relevant to the Division's complaint and amended complaint, blacks and females did, in fact, service Libutti as dealer, boxperson and floorperson, while Libutti gambled at Trump Plaza. The record also demonstrates that white male employees were removed from Libutti's game more frequently than blacks or females.

The record shows that although the Division's witnesses believed they each had the experience and qualifications to work Libutti's game; those in supervisory positions believed otherwise. Paul Laviolette, the Division's witness, testified, credibly, that during the period May 1986 to June 1988, the most qualified craps dealers on the day shift were all white males. He further testified, credibly, that as a pit boss, he would not have assigned the Division's witnesses to Libutti's game for such reasons as; weak dealer (Denise Bellamy), very weak dealer due to lack of experience and inability to compute rapidly (Gwendolyn Torian), lacks physical and mental dexterity (Newton Brown), lacks ability to maintain composure in difficult situations (Louis Monroe), lacks sufficient experience and mental capacity (Arlene Daniels), becomes easily flustered (Catherine Carlino), lack of ability (Dwain Harris) and, allowed erroneous payouts (Carl Carpenter). Melissa Steinberg similarly testified concerning the assignment of the Division's witnesses to Libutti's game. Ms. Steinberg's credible testimony indicated that Bellamy, Torian, Brown, Monroe, Daniels, Carlino, Harris and Carpenter had all been passed over for promotion at Trump Plaza and that each of them were seeking an opportunity by which to "get even" with Trump Plaza management.

Only one of the witnesses who testified on behalf of the Division could state, with any degree of certainty, as to the date the individual employee was removed from Libutti's game during the period May 1986 to June 1988. The dates testified to were shown to be false because the witness did not work on the days set forth on the record. Gwendolyn Torian stated in her unsworn interview that she was reassigned from Libutti's game on May 15 or 16, 1988. The record shows that Torian left work due to illness on May 15, 1988 and did not return to work on May 16, 1988.

None of the Division's witnesses could testify, with any certainty, that they were more qualified than those who replaced them on Libutti's table to perform the duties of the craps game. The Division did not place any of the replacement employees personnel records on the herein record in order for this tribunal to make a comparison of their respective qualifications with those employees replaced.

DISCUSSION AND CONCLUSIONS

The Division brings this action against Trump Plaza by way of complaint and amended complaint, wherein the Division alleges Trump Plaza to have violated provisions of the Casino Control Act, N.J.S.A. 5:12-134b. and c. and the applicable regulations, N.J.A.C. 19:53-1.5; together with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. The statute and regulations cited by the Division are set forth hereinbelow as follows:

> **N.J.S.A. 5:12-134**
>
> b. No license shall be issued by the commission to any applicant, including a casino service industry as defined in section 12 of this act, who has not agreed to afford an equal employment opportunity to all prospective employees in accordance with an affirmative-action program approved by the commission and consonant with the provisions of the "Law Against Discrimination," P.L. 1945, c. 169 (C. 10:5-1 et seq.).
>
> c. Each applicant shall formulate for commission approval and abide by an affirmative-action program of equal opportunity whereby the applicant guarantees to provide equal employment opportunity to rehabilitated offenders eligible under sections 90 and 91 of this act and members of minority groups qualified for licensure in all employment categories, including the handicapped, in accordance with the provisions of the "Law Against Discrimination," P.L. 1945, c. 169 (C. 10:5-1 et seq.), except in the case of the mentally handicapped, if it can be clearly shown that such handicap would prevent such person from performing a particular job.

The relevant portions of the applicable regulations at N.J.A.C. 19:53-1.5 are set forth as follows:

(a) Affirmative action programs required by N.J.A.C. 19:53-1.3(b) shall include the following:

1. A guaranty that the applicant or licensee will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, liability for service in the armed forces of the United States, or because of mental handicap or physical handicap where reasonable accommodation may be made to allow for such handicap without causing an undue hardship on the operation of the business of the applicant or licensee, or because the employee or applicant for employment is a rehabilitated offender eligible under section 91 of the act, subject to the provisions of section 89 and 90 of the act;

2. A guaranty that the applicant or licensee will take affirmative action to insure that applicants for employment who are within the groups set forth in N.J.A.C. 19:53-1.5(a)1 are recruited and employed at all levels of its workforce, and that employees are treated during employment without regard to the characteristics listed in N.J.A.C. 19:53-1.5(a)1. Such affirmative action shall include but not be limited to, the following:

i. Employment, upgrading, demotion or transfer;
ii. Recruitment or recruitment advertising;
iii. Layoff or termination;
iv. Rates of pay or other forms of compensation; and
v. Selection for training programs.

3. A provision that the applicant or licensee will post in conspicuous places, available to employees and applicants for employment, notices to be provided by the commission setting forth the obligations of the applicant or licensee as described in N.J.A.C. 19:53-1.5(a)1 and 2.

The New Jersey Law Against Discrimination at N.J.S.A. 10:5-12, provides, in pertinent part, as follows:

It shall be unlawful employment practice, or, as the case may be, an unlawful discrimination:

a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, sex . . . to refuse to hire or employ or to bar or to discharge or require to retire, unless justified by lawful considerations other than age, from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment; . . .

The Division correctly observes that the Law Against Discrimination (LAD) reflects "[t]he clear public policy of this State . . . to abolish discrimination in the work place." Shaner v. Horizon Bancorp., 116 N.J. 433, 436 (1989). Our Supreme Court earlier stated:

> Employment discrimination due to sex or any other invidious classification is peculiarly repugnant in a society which prides itself on judging each individual by his or her merits. . . .

The Court continued by observing that:

> New Jersey has always been in the vanguard in the fight to eradicate the cancer of unlawful discrimination of all types from our society. We have had a law against discrimination since 1954 -- some twenty years before the effective date of Title VII [1]Pepper v. Princeton Univ. Bd. of Trustees, 77 N.J. 55, 80 (1978).

Our Legislature, in enacting the Law Against Discrimination, set forth its finding and declaration at N.J.S.A. 10:5-3, where it states:

> The Legislature finds and declares that practices of discrimination against any of its inhabitants, because of race, creed, color, national origin, ancestry, age, sex, marital status or because of their liability for service in the Armed Forces of the United States, are a matter of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and foundation of a free democratic State.

Thus, the clear and unambiguous public policy of New Jersey is to eliminate discrimination which manifests a bias or prejudice against its people because of their race, creed, color, national origin, ancestry, age, sex or marital status, among other reasons. "All persons shall have the opportunity to obtain employment . . . without discrimination . . . " N.J.S.A. 10:5-4.

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1 Civil Rights Act of 1964, Pub. L. 88-352, Title VII, § 701, July 2, 1964.

The Division has charged that Trump Plaza engaged in disparate treatment of its employees based upon rumor and gossip that one of Trump Plaza's preferred patrons, Robert Libutti, did not wish to have blacks or females serve as dealers, boxpersons or floorpersons at his gaming table.

Disparate treatment is one of two separate theories of relief recognized in actions concerned with discrimination. As the United States Supreme Court said in the matter of International Brotherhood of Teamsters v. United States, 431 U.S. 324, 335 f.n. 15 (1977):

> "Disparate treatment" such as alleged in the present case is most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex, or national origin. Proof of discriminatory motive is critical, although it can in some situations be inferred from the mere fact of differences in treatment.

The standard of proof with regard to claims of discrimination characterized as "disparate treatment" is set forth in the matter of McDonnell Douglas Corp. v Green, 411 U.S. 792 (1973) and adopted by the New Jersey Supreme Court in Peper, supra. The Peper Court quoted, with approval, from McDonnell Douglas where it said:

> The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. [411 U.S. at 802, 93 S. Ct. at 1824, 36 L. Ed. 2d at 677 (footnote omitted)] 77 N.J. at 82.

The Peper Court recognized that the McDonnell Douglas matter concerned alleged racial discrimination only, however, it continued hold that the McDonnell Douglas tests are equally applicable to other forms of employment discrimination, i.e., discrimination against females on the basis of sex. Id. 82-83.

The application of the McDonnell Douglas standards requires that the Division establish a prima facie case by demonstrating that (1) the Trump Plaza employees identified by the Division in its complaint and amended complaint belong to a protected class; (2) that the employees were qualified at the time for the positions from which they were removed or reassigned; and (3) despite their qualifications, they were improperly removed or reassigned from their positions on the basis of their race or sex.

Trump Plaza observes that the burden of proving a prima facie case is not onerous. It must merely be demonstrated by a preponderance of the evidence that the individuals were qualified for the positions from which they were rejected under circumstances giving rise to an inference of discrimination. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 67 L. Ed. 207, 101 S. Ct. 1089 (1981). "A prima facie case raises an inference of discrimination only because [we] presume these acts, if otherwise unexplained, are more likely than not based on the considerations of impermissible factors." 450 U.S. at 254. Accordingly, the initial burden of proof can usually be easily met. "In prescribing the prima facie case criteria, the Court gave recognition to the fact that proof of unlawful discrimination rarely can be demonstrated through direct evidence but normally is demonstrated only through circumstantial evidence. It did not make plaintiff's burden in meeting those criteria onerous." Erickson v. Marsh & McLennan Co., Inc., 227 N.J. Super. 78 (App. Div. 1988) at 86.

Once proof has been offered, by a preponderance of the evidence, sufficient to establish a prima facie case, the burden shifts to the defendant to articulate some legitimate nondiscriminatory reason for the alleged conduct. Texas Department of Community Affairs, 450 U.S. at 253; see also, Slohoda v. United Parcel Service, Inc., 207 N.J. 78, 151 (App. Div. 1986) cert. den. 104 N.J. 400 (1986). "An employer's duty to articulate a legitimate nondiscriminatory reason does not oblige it to persuade the court that it was actually motivated by the proffered reasons, but it must at least raise a genuine issue of fact as to whether it discriminated against the plaintiff." Id. at 153 (citing Texas Department of Community Affairs, 450 U.S. at 254). (emphasis added). In this regard, the ultimate burden of persuasion remains upon the plaintiff throughout the entire case. Accordingly, the employer need only articulate a clear and reasonably specific legitimate nondiscriminatory basis. If the employer succeeds in articulating such a basis, the plaintiff is given the opportunity

to prove by a preponderance of the evidence that the legitimate reasons advanced by the employer "were not true reasons but were a pretext." Texas Department of Community Affairs, 450 U.S. at 253. The employer's articulated basis frames an issue of fact that allows the plaintiff to respond by presenting evidence of a pretext, "thereby avoiding the legally mandatory inference of discrimination arising from the plaintiff's evidence." Slohoda, 207 N.J. Super. at 153. "The burden [of pretext] merges with the ultimate burden of persuasion that [the plaintiff] was the victim of intentional discrimination," and this burden is met if the plaintiff persuades the court that (1) the employer was more likely motivated by a discriminatory reason, or (2) the employer's reason is unworthy of credibility. Texas Department of Community Affairs, 450 U.S. at 255. (emphasis added). This is consistent with the holding in Slohoda in which the court stated that "it is sufficient if, taken with other possibly meritorious reasons, the discriminatory purpose was a determinative factor." Slohoda, 207 N.J. Super. at 155. As such, a plaintiff meets the burden of proof and burden of persuasion if proof is presented, by a preponderance of the evidence, sufficient to persuade a fact finder that the employer intentionally discriminated against a member of a protected class in the terms and conditions of his or her employment and that the employer's proffered nondiscriminatory basis is either incredulous or more likely motivated by a discriminatory reason (i.e., the discriminatory purpose was a determinative factor).

Trump Plaza argues that in order to succeed in these proceedings, the Division must have established, by a preponderance of the evidence, and have persuaded this Court, that Trump Plaza's proffered basis for reassigning employees was either unbelievable or more likely motivated by a discriminatory reason. This has simply not been done.

The Division argues that it has satisfied the McDonnell Douglas test by proving by a preponderance of the evidence: (1) that the gaming personnel involved are members of classes protected by anti-discrimination law; (2) that they were qualified to continue in their capacities as dealers, boxpersons, or floorpersons; i e , that they were performing their jobs at a level that satisfied their superiors; (3) that despite these qualifications, they were reassigned or not allowed to deal to or act as boxpersons in regard to casino games participated in by Robert Libutti; and (4) that they were replaced by gaming personnel who were not members of a protected class, or if they were not reassigned, that nonminority workers with comparable

work records were allowed to service Libutti, while the gaming personnel at issue were not allowed to do so.

The Division argues, in the alternative, that if the case is classified as one of "mixed motive," the standard of proof may vary from that imposed in a pretextual case. Under federal law, this standard (which applies equally to cases involving other protected classifications) has been articulated as follows:

> We hold that when a plaintiff in a Title VII case proves that her gender played a motivating part in an employment decision, the defendant may avoid a finding of liability only by proving by a preponderance of the evidence that it would have made the same decision even if it had not taken the plaintiff's gender into account. [Price Waterhouse, supra, ____ U.S. at ____, 109 S. Ct. at 1795.]

New Jersey's standard of proof in a so-called "mixed motive" case varies from that articulated in Price Waterhouse. Our Appellate Division in Slohoda v. United Parcel Service, Inc., 207 N.J. Super. 145 (App. Div.), certif. den., 104 N.J. 400 (1986), has articulated in a ruling binding on this court that plaintiff need only prove that an illegitimate factor motivating employer's challenged decision was a "determinative factor."

> [F]or purposes of the Law Against Discrimination plaintiff need not prove that the termination was motivated solely by a discriminatory purpose. It is sufficient if, taken with other possibly meritorious reasons, the discriminatory purpose was "a determinative factor." Hagelthorn v. Kennecott Corp., 710 F. 2d. 76, 82 (2d Cir. 1983). [207 N.J. Super. at 155.]

The Division argues that under Slohoda, once it has proved that race and/or gender were determinative factors in Trump Plaza's decision to prevent the enumerated gaming personnel from servicing Robert Libutti, the Division must prevail. This is true whether or not Trump Plaza has proved that its employment decisions were also predicated on legitimate considerations.

The Division sets forth other legal arguments which, having been carefully considered, are not recited here.

I **CONCLUDE** that the Division has failed to prove, by a preponderance of the credible evidence, that Trump Plaza committed violations of the Casino Control Act or the New Jersey Law Against Discrimination. As was said in Jones v. College of Med. & Dent. of N.J. Rutgers, 155 N.J. Super. 232, 236 (App. Div. 1977):

> Discrimination involves the making of choices. The statute [N.J.S.A. 10:5-1 et seq.] does not proscribe all discrimination, but only that which is bottomed upon specifically enumerated partialities and prejudices. Thus, we have held that in discrimination cases an intent to discriminate must be proved (citation omitted) (Emphasis supplied).

The facts herein clearly demonstrate that those individuals named in the Division's complaint are within the statutory protected classifications under race and sex and, although they each were removed from or not assigned to Libutti's games, others similarly situated by the protected classifications were assigned to and participated in Libutti's gaming activities during the period May 1986 through May 1988. These individuals, both blacks and females, served on Libutti's game as dealers, boxpersons and floorpersons during the controverted period. Their service to Libutti was not without incident where they too were removed from his game when Libutti suffered heavy losses. Due to their expertise most, but not all, of these individuals were subsequently assigned to Libutti's craps table and continued to serve him as a preferred patron at Trump Plaza.

The record clearly shows that Libutti's preference for Trump Plaza games personnel was, in fact, indiscriminate. He requested that white males be removed from his game more frequently than those protected by statute under the Law Against Discrimination. The fact that blacks and females were removed from Libutti's game, together with white males, does not show bias or prejudice. Nor does it demonstrate an intent to discriminate against members of the protected class. Jones, supra. Rather, the record demonstrates that the most qualified of Trump Plaza's game personnel were assigned to Libutti, whether they be white, male, black or female.

I **FIND** and **CONCLUDE** that the Division has established a prima facie case, pursuant to McDonnell Douglas test to the extent it has demonstrated that: (1) The individual Trump Plaza employees identified by the Division in its complaint and

amended complaint are members of a protected class under our laws against discrimination; (2) That the Trump Plaza employees were licensed and qualified to perform in their respective positions; and (3) despite their respective licensure and qualifications, they were either removed or not assigned to patron Robert Libutti's gaming table while he gambled at Trump Plaza at divers time between May 1986 and June 1988.

I **FIND** and **CONCLUDE** that the Division has failed to demonstrate, by any standard of proof, that Trump Plaza's reassignment or removal from Robert Libutti's gaming table of any of the employees named in the Division's complaint and amended complaint was based on race or sex. As the Division observes, there is no "smoking gun" with regard to racial or sexual discrimination on the part of Trump Plaza. There is absolutely no evidence that race or gender was a consideration by Trump Plaza management when the employees were either removed or replaced from Robert Libutti's games. I am persuaded, given the facts in this controversy, that Trump Plaza's motive in reassigning or removing its employees from Robert Libutti's games was for legitimate business, nondiscriminatory reasons.

I, therefore, **CONCLUDE** that the Division has failed to demonstrate that Trump Plaza acted with an intent to discriminate against blacks or females in its employ.

I, therefore, **CONCLUDE** that under the circumstances of this matter, Trump Plaza Associates did not violate the provisions of the Casino Control Act, pursuant to N.J.S.A. 5:12-134b and c. or its regulations at N.J.A.C. 19:53-1.5.

I further **CONCLUDE** that Trump Plaza Associates did not violate the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

ORDER

Accordingly, it is hereby ORDERED that the Division's Complaint and Amended Complaint be and are hereby **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

16 August 1990
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

8/17/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 22 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Thomas DeLorenzo
Roger Martel
Newton A. Brown
Louis W. Monroe
Gwendolyn Torian
Carlton P. Carpenter
Arlene Daniels
Dwaine Harris
Denise Bellamy
Cathy Carlino
Paul Laviolette
Roland H. Coleman

For the Respondent:

Melissa Steinberg
James J. Leach
Maria Street
Gary Leon Noa
Ellen Rush
Susan Ciboldi
Richard Holmes
John Ciafarone
Karen L. Wisher
Robert Gaine Yee
Christopher J. Ford
Gary Massey

EXHIBIT LIST

For the Petitioner:

P-1 Sworn Interviews of Carlton F. Carpenter, Gwendolyn E. Torian, Louis W. Monroe, Jr., dated July 20, 1988
P-2 Sworn Interview of Susan Ciboldi, dated August 2, 1988
P-3 Sworn Interview of Christopher J. Ford, dated August 2, 1988
P-4 Sworn Interview of Arthur V. Crawford, dated August 2, 1988
P-5 Sworn Interview of Gary Massey, dated August 2, 1988
P-6 Sworn Interview of Margaret L. Camper, dated July 18, 1988
P-7 Sworn Interview of Newton Brown, dated July 18, 1988
P-8 Sworn Interview of Arlene F. Daniels, dated July 18, 1988
P-9 Trump Plaza Hotel and Casino Jobs Compendium, dated 11/87, for pit boss
P-10 Trump Plaza Documentation Regarding Complimentaries given to Robert Libutti during 1986, 1987 and 1988: Diamond Ring, 1987 and 1988 Rolls Royces, Mercedes Benz
P-11 Casino Control Commission Inspector's Narrative, Trump Plaza Casino/ Hotel, from Senior Inspector G. Stormel, to Principal Inspector J. Mull, dated 12-22-87, Regarding Libutti Incident

P-12 Casino Control Commission Inspector's Narrative, Trump Plaza Casino/Hotel, from T. Knowles to Jack Mull, dated 12-22/87, Regarding Libutti Incident
P-13 1987 Dealer Evaluation of Arlene Daniels
P-13A Trump Plaza dealer evaluation form for Carl Carpenter
P-13B Trump Plaza dealer evaluation form for Louis Monroe
P-13C Trump Plaza dealer evaluation form for Newton Brown
P-13D Trump Plaza dealer evaluation form for Gwen Torian
P-13E Trump Plaza dealer evaluation form for Arlene Daniels
P-13F Trump Plaza dealer evaluation form for Margaret Camper
P-13G Louis Monroe's dealer evaluation form dated 7-28-88
P-13H Trump Plaza Floor Person/Box Person Evaluation 12-88
P-13I Dealer Evaluation Form for Dwain Harris dated 6-29-87
P-13J Evaluation of Denise Bellamy, dated 1988
P-13K Evaluation of Denise Bellamy, dated 12-1-87
P-14 Affirmative Action Plan of Trump Plaza Casino/Hotel
P-15 Handwritten letter of Agent Randall Royfe, dated 10/19/88, pertaining to gambling activity of patron Robert Libutti
P-16 Report of Agent Thomas DeLorenzo with attached Robert Libutti - schedule of trip play from 5/28/86 to 9/20/88
P-16A Piece of Paper Executed by Thomas DeLorenzo, indicating average bet for 1986, 1987, 1988
P-17 Memorandum to Howard Bacharach from Roland H. Coleman, dated May 26, 1988
P-17 1988 Evaluation of Arlene Daniels
P-18 Sworn Interview of Paul Laviolette, conducted on October 17, 1988
P-19 Sworn Interview of Roger Martel, dated November 14, 1989
P-20 Sworn Interview of Dwaine Harris, dated November 21, 1989
P-21 Sworn Interview of Cathy Carlino, dated November 21, 1989
P-22 Daily pit sign-in sheet
P-23A through P-23D Commendations from Trump Plaza to Carleton Carpenter
P-23E Notice of Unsatisfactory Performance/Misconduct
P-24 Sworn Statement of Denise Bellamy, dated October 17, 1988
P-25A Performance Appraisal
P-25B Performance Appraisal
P-25C Evaluation
P-25D Evaluation
P-25E Evaluation
P-25F Commendation
P-25G Procedure Test
P-25H Document concerning Ms. Carlino's leave of absence
P-26 Employee performance appraisal, dated 4/16/86, for Melissa Steinberg
P-27 Floor person/box person evaluation, dated December 1988, for Melissa Steinberg
P-28 Unsatisfactory Performance Form
P-29 Informal Interview of Ms. Ciboldi by Agent Schwefel

For the Respondent:

R-1 Computer-generated form entitled, "Player Trips Summary," dated 1/1/86 through 12/31/89
R-2 Notice of Unsatisfactory performance/misconduct
R-3 Notice of Unsatisfactory performance/misconduct
R-4 1986 Dealer Evaluation
R-5 Trump Plaza Notice of Unsatisfactory Performance/misconduct dated 6-8-87

R-6 Notice of Unsatisfactory Performance/Misconduct 9-12-84
R-7 Notice of Unsatisfactory Performance/Misconduct 12/5/85
R-8 Notice of Unsatisfactory Performance/Misconduct 4/4/87
R-9 Employee Performance Appraisal 10-84 to 10-85
R-11 Sign-in sheet, dated May 15, 1988
R-12 Sign-in sheet, dated May 16, 1988
R-13 Notice of Unsatisfactory Performance/Misconduct, dated July 16, 1988
R-14 Notice of Unsatisfactory Performance/Misconduct, dated October 18, 1986
R-15 Notice of Unsatisfactory Performance/Misconduct
R-16 Dealer Performance Appraisal Evaluation
R-17 Dealer Evaluation Form
R-18 Notice of Unsatisfactory Performance/Misconduct, dated 6-19-89
R-19 Employee Performance Appraisal dated 7-85
R-20 Dealer Performance Appraisal dated 7-86
R-21 Floor person box person evaluation dated 12-88
R-22 Mr. Harris' own records of his time
R-23 Employee Performance Appraisal of Denise Bellamy, dated November 28, 1984
R-24 Employee Performance Appraisal of Denise Bellamy, dated December 14, 1985
R-25 Supervisory annual performance review of Denise Bellamy, dated 12-1-86
R-27 Discrimination Investigation Report
R-28 Letter, dated January 23, 1990, to Brian D. Spector, Esquire, from the Division of Gaming Enforcement
R-29 Photograph of craps table
R-30 Trump Plaza dealer evaluation form, dated May 5, 1987, for Melissa Steinberg
R-31 Trump Plaza floor person/box person evaluation form, dated December 1987, for Melissa Steinberg
R-32 Notice of Outstanding Service Commendation issued to John Leach dated 8-13-86
R-33 Mr. Leach's Evaluation, due date 12-1-87
R-34 Mr. Leach's Evaluation, due date 12-1-88
R-35 1986 Evaluation of Maria Street
R-36 1987 Floor Person/Box Person Evaluation of Maria Street
R-37 1988 Floor Person/Box Person Evaluation of Maria Street
R-38 Dealer Evaluation Form of Gary Noa dated 9-22-87
R-39 Casino Control Commission, Division of Affirmative Action and Planning, Monthly Complaint Log

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-167
LICENSE NO. 040799-21
OAL DOCKET NO. CCC 1929-90
ORDER NO. 90-27-6-G

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

Complainant,

v.

ORDER

ALLISON TURNER,

Respondent.

This matter having been transmitted to the Office of Administrative Law for a hearing; and the respondent having failed to appear at scheduled proceedings; 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 July 3, 1990,

IT IS on this 24th day of July 1990, ORDERED that the initial decision is modified as follows:

> The Administrative Law Judge (ALJ) concluded that the respondent no longer seeks a hearing on the complaint and, therefore, in accordance with N.J.A.C. 1:1-14.4(a), determined to "Dismiss this matter." Upon the unexplained failure of a party to appear at scheduled proceedings, N.J.A.C. 1:1-14.4(a) authorizes the ALJ to "dismiss the matter or grant the requested relief." Where as here the respondent fails to appear and defend against a complaint

for revocation the appropriate action is to grant the relief requested in the complaint.

IT IS FURTHER ORDERED that the respondent's casino employee license is revoked based upon her constructive admission pursuant to N.J.S.A. 5:12-108(d) of the matters and facts contained in the complaint, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that Allison Turner 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.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly LR
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
FAILURE TO APPEAR
OAL DKT. NO. CCC 1929-90
AGENCY DKT. NO. 90-167

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,
Petitioner,
v.
ALLISON TURNER,
Respondent.

Ralph L. Fusco, Deputy Attorney General, for the petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

No appearance by or on behalf of respondent

Record Closed: May 21, 1990 Decided: May 30, 1990

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

This matter concerns the complaint, dated November 14, 1989, filed by the petitioner with the Casino Control Commission, recommending the denial of the respondent's casino employee license. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on March 14, 1990, for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

By written notice dated April 30, 1990, the Office of Administrative Law notified the parties that there would be a telephone prehearing conference on May 9, 1990, at 4:00 p.m. In this notice it is stated:

> Parties who do not have an attorney should immediately contact this office at the above number to supply a telephone number where they can be reached at the date and time listed above.

The respondent did not provide the Office of Administrative Law with a telephone number nor did she contact the Office of Administrative Law on the date set for the prehearing conference.

Ten days have passed since the scheduled prehearing conference date. During that period, the respondent has not contacted the Office of Administrative Law to offer any explanation for her failure to contact the office for the prehearing conference.

Based on the above, I **CONCLUDE** that Allison Turner no longer seeks a hearing regarding the complaint filed by the respondent regarding her casino employee license. In accordance with N.J.A.C. 1:1-14.4(a), I **DISMISS** this matter.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

May 31 1990
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

6/4/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 0 6 1990
DATE

Jaynee LaVecchia/K.S.
OFFICE OF ADMINISTRATIVE LAW

caj

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

None

For the Respondent:

None

WITNESSES:

For the Petitioner:

None

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 90-EA-231
LICENSE NO. 034089-21
REGISTRATION NO. 036898-40
OAL DOCKET NO. CCC 01027-90
ORDER NO. 90-49-5

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF STEVEN VALENTINO

ORDER

A hearing 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 December 12, 1990,

IT IS on this 18th day of December 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FILED

NOV 5 1990

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION
OAL DKT. NO. CCC 1027-90
AGENCY DKT. NO. 90-EA-231

STEVEN VALENTINO,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

John E. Shields, Jr., Esq., for the petitioner (Hoffman, DiMuzio, Hoffman and Marcus, attorneys)

R. Lane Stebbins, Deputy Attorney General, for the respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: September 20, 1990 Decided: October 29, 1990

BEFORE **STEVEN L. CARNES,** ALJ:

STATEMENT OF THE CASE

The petitioner, Steven Valentino, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (craps dealer and box person), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section

89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so he could be employed as a craps dealer and boxperson in the casino industry. By letter to the Commission, dated December 6, 1989, the Division objected to the petitioner's application for licensure as a box person, asserting that the petitioner had committed the offense of possession of a lost or stolen credit card in violation of N.J.S.A. 2C:21-6. As such, the Division objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on January 22, 1990, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated January 26, 1990, which was received by the Commission on January 29, 1990, the petitioner requested a hearing. On February 1, 1990, the Commission transmitted the matter to the Office of Administrative Law, which received it on February 7, 1990, 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 in the matter was held before me on May 24, 1990. At that time, the Division moved to amend its complaint to include a count of a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1) despite the fact that the act was not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g. The alleged offense involved an attempted theft by deception in violation of N.J.S.A. 2C:20-4 and N.J.S.A. 2C:5-1. This motion was granted, and the complaint was amended. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4 and N.J.S.A. 2C:5-1, attempted theft by deception.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A 5:12-89b(2) as incorporated within section 90b.

1425

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on September 20, 1990, at the Municipal Courtroom, Pleasantville Police Building, Pleasantville, New Jersey, after which the record closed.

THE FACTS

In October 1985, the petitioner found a brown camera case type pouch in the marina area of Atlantic City near Trump's Castle Hotel and Casino. In the bag were keys, business cards, a checkbook, credit cards, and other forms of identification belonging to Barry Newsome. Mr. Newsome reported the loss of his credit cards to the issuing stores.

On October 17, 1985, the petitioner attempted to purchase a Sony Super Beta hi-fi model HF900 valued at $1259.00 at Bamberger's Department Store in the Deptford Mall. The petitioner presented the credit card to the clerk and represented himself as being Barry Newsome. At that time the petitioner intended to sign the credit card charge slip as Barry Newsome. After a brief period of time, the petitioner was approached by a store manager who stated "Mr. Newsome, you reported your credit card as being missing." The petitioner then indicated that the credit card was not his and that he was not Barry Newsome. The petitioner was escorted off the store floor and was held until arrested by Deptford Township Police. The petitioner told the police there were additional items belonging to Mr. Newsome in his car. The petitioner consented to a search of his vehicle, and the case and its contents belonging to Mr. Newsome were recovered. The petitioner was charged with possession of a lost or stolen credit card in violation of N.J.S.A. 2C:21-6 and receiving stolen property in violation of N.J.S.A. 2C:20-7.

On December 5, 1985, the petitioner was indicted by the Gloucester County Grand Jury and was charged in Indictment No. 1-1176-12-85 with one count of using a credit card with the intent to defraud the issuer in violation of N.J.S.A. 2C:21-6d (R-2). The petitioner entered a six month Pretrial Intervention Program. He successfully completed this program, and on August 6, 1986, the charge contained in the indictment was dismissed (R-3).

At the age of 18, the petitioner applied for and was granted a casino hotel employee registration. In 1980, he applied for and was granted a casino employee license. As such, he never renewed his casino hotel registration. From January 1982 through March 1983, the petitioner was employed as a change person at the Tropicana Hotel and Casino. While employed at the Tropicana, the petitioner attended the Casino Career Institute in order to learn how to be a craps dealer. In January 1983, after completing this course, the petitioner's casino employee license was upgraded to include a craps dealer credential. He left Tropicana in order to accept a position as a craps dealer at Resorts International Hotel and Casino. The petitioner remained at Resorts from March 1983 through February 1987. In 1985, the petitioner's casino employee license was again upgraded to include a box person credential.

In March 1986, the petitioner married. The couple experienced marital difficulties, and the separated after one year. As both of them were craps dealers at Resorts, they often worked together. The petitioner found this situation to be extremely upsetting and difficult so he quit his job at Resorts.

The petitioner remained unemployed for a period of time before briefly accepting employment at the Atlantis Hotel and Casino. In December 1988, the petitioner began working as a craps dealer at Bally's Park Place Hotel and Casino. He was terminated from this position in December 1989 after having an argument with a patron over a bet. The patron never "booked the bet,", and the petitioner refused to pay off the bet as a winning wager. The petitioner immediately was hired as a craps dealer and change person at Trump's Plaza Hotel and Casino. The petitioner remained there until May 1990 when he was hired as a box person at the Showboat Hotel and Casino.

The petitioner is 27 years old and was 22 years old at the time of the offense His early childhood was spent in Newark. He, along with his mother, father and three sisters, moved to Hammonton. He completed the tenth grade and participated on the track team.

In 1985, the petitioner was in a severe state of depression. His mother was a "binge alcoholic" who drank to excess. His father also had an alcohol problem, and the petitioner had a very strained relationship with his parents. The petitioner began drinking heavily, and occasionally used cocaine at social events. The

petitioner's alcoholism would take him out of reality. He attempted to purchase the hi-fi on an impulse in order to get a sense of gratification.

In 1986, the petitioner recognized that he had a problem. He began attending counseling sessions provided by Resorts International. He was referred to the Fairmont Institute which is a rehabilitation center in Philadelphia, Pennsylvania. The petitioner entered a 28 day inpatient program in January 1987.

The Fairmont Institute Intake Pyschological Assessment of the petitioner provides:

> The patient was admitted into the Addiction Treatment Service describing increased feelings of depression, confusion and anxiety. He struggles with unresolved feelings of guilt over the need to fabricate events in his life. The patient reports various familial, interpersonal and occupational issues. . . . Familiarly the patient expresses rage towards his father for alleged infidelity and was physically violent with him last year. This event required police intervention. Two years ago the patient's mother was hit by a car, the patient reports feelings of responsibility although he was not directly or indirectly involved in this accident. . . . The patient reports disturbed sleeping patterns and significant weight loss over the past four months due to poor eating habits. The patient began indulging in self defeating behaviors at age 15. He is positive for blackouts and negative for suicide ideation
>
> . . . .
>
> The patient describes his childhood as a nightmare. He recalls excessive fighting, physical and verbal abuse with no close relationships in the nuclear family other than his mother. He alleges that she is an alcoholic who has not had a drink for the past two years as the result of her being hit by a car while intoxicated.
>
> When he was 12 years old his maternal uncle hung himself and at age 16 another maternal uncle was found dead. The patient reports these events were never clearly explained. He feels much grief for his mother as she has suffered so much. He is extremely angry at his father, verbalizing his inadequacy as a husband and a father. . . . There is a positive history of alcoholism in the nuclear and extended family. The patient lived at home until age 16.
>
> . . . .

The Fairmont Institute Discharge Summary provides:

> Provisional Diagnosis: Major Affective Disorder, Severe with Melancholia
>
> Reason for Admission: This is the first Fairmont Institute and psychiatric hospital admission for this 23 year old, single, white male. He presented with a severe clinical depression which he

reported becoming increasingly debilitating in the weeks preceding his admission. He felt he could no longer function with the support of only the outpatient psychotherapy he was receiving. He presented with an intensely dysphoric mood and noted recent disturbances in sleep, appetite (with 20 lb. weight loss), and level of energy. He spoke of difficulty functioning at work and in his relationship with his girlfriend It was obvious that his self-esteem was extremely poor with the patient considering himself a failure. Mr. Valentino had abused alcohol and drugs to help alleviate his dysphoria, but this self-medication pattern only exacerbated his negative feelings. He had even entertained some passive suicidal ideation (without plans) prior to admission.

. . . .

Family History: . . . . He described a very difficult childhood with much fighting between his parents. He noted that his mother was an alcoholic, who stopped drinking two years ago; he did say that he felt some closeness with her The patient described an extremely negative relationship with his father, and he noted that his father was domineering, unsupportive, and mistreated the patient's mother.

. . . .

Mental Status Examination: . . . Mood was extremely depressed, and the patient was preoccupied with his decline in functioning and his lack of self-worth. He admitted to passive suicidal ideation in which he had hoped that he would die; he denied any active ideation or plans, however. Intellectual functioning appeared to be intact with a patient of average intelligence. Insight was fair and judgment poor.

Hospital Course: Mr. Valentino was treated with individual, group, milieu, and adjunctive therapies. He was exceedingly dysphoric and downtrodden at the time of his admission to the hospital. He complained of disturbances in his sleep, appetite, and energy; he denied suicidal ideation, although admitted to some fleeting thoughts prior to admission. He also presented with difficulties attending, concentrating, and focusing in therapy sessions. He was able to convey a very poor sense of self-esteem, and the patient berated himself constantly for his decline in functioning. He was quite anxious interpersonally, both in therapy sessions and in the way he interacted with peers. He reported negative feelings about others, admitting that he had great difficulty trusting. It was reported that he was rather isolated on the unit.

Despite such early difficulties, Mr. Valentino gradually was able to verbalize his problem trusting others. This issue was especially salient with regard to his father. The patient spoke of how his father had mistreated him and how he could never please his father or receive support from him. He expressed concern about how he had become over reliant on his girlfriend, fearing that he would driver her away.

A family session was held with her present, which caused him to feel much anxiety, but in the end helped him feel supported and

relieved. His girlfriend reiterated her concern over his neediness and need to receive support from other people as well.

A second family session was held with Mr. Valentino's parents. Again, the patient was extremely anxious, especially since he had not spoke with his father for almost one year. Although there was much tension between them, the patient was able to express his feelings in an appropriate manner without losing his temper. He was also able to express positive feelings and a desire for a good relationship with his father. Mr. Valentino said that he felt very relieved following the session, although he was realistic that the relationship between his father and himself would take further work to improve.

In the latter stages of treatment, Mr. Valentino continued to demonstrate improvement. He reported a renewed ability to sleep, eat and concentrate. It was apparent that he experienced renewed energy and spontaneity. It was reported that he was more involved with his peers, although he still had a tendency to isolate himself and regard others with caution. Mr. Valentino did express a commitment to utilize his supports, especially outpatient therapy (which he admitted he had attended on a sporadic basis). He was also able to gain insight into how he misinterpreted the motives and others and "wrote them off" without giving them a change. He admitted that he had lost some potentially good friends and supports this way. He expressed anxiety over returning to work and was able to work through these fears as well.

At the time of his discharge, Mr. Valentino was anxious but increasingly confident about his ability to cope.

Prognosis: Fair. Mr. Valentino made significant improvements in terms of his mood, self-esteem, and attitudes towards others. He still has considerable work which he needs to do on an outpatient basis.

Disposition: The patient planned to return to his apartment with his girlfriend. Outpatient psychotherapy was to continue with is previous therapist. The patient also made a commitment to attend AA and NA meetings to work on his problems with self-medication.

Discharge Diagnosis:	DSM-III Axis I	Major Affective Disorder, Single Episode, Severe with Melancholia
	Axis II	Mixed Personality Disorder
	Ais III	Drug and Alcohol Dependence in Remission

The petitioner has now been sober for four years. He has worked his way up in the casino industry to a supervisor's position. He is now engaged, and has a positive outlook. He is tutored one day a week in an effort to obtain a high school equivalency diploma (G.E.D.). He exercises in a local gym, and he participates in body building competitions. He regrets his prior misconduct and expressed remorse. He has accepted responsibility for his actions, and has attended Alcoholic

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Anonymous and Narcotic Anonymous meetings over the last four years. In February 1988, he moved into Mayfair By the Sea, which is a halfway house for recovering alcoholics. This provided a "safe place" environment and enabled him to continue with his rehabilitation.

Several witnesses testified on behalf of the petitioner attesting to his rehabilitation and to his good character, honesty and integrity. The petitioner was described as being a very courteous and respectful individual and an excellent dealer. He was portrayed as an extremely honest individual who now possesses the highest integrity. He is hard working and trustworthy. The witnesses attributed the credit card incident as a onetime mistake which occurred at a time when the petitioner was experiencing severe personal problems and difficulties. Every witness testified as to the petitioner's sincere efforts at rehabilitation.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that his misconduct was, in part, due to immaturity. I am also inclined to believe that it was the result of inexperience and the difficulty in dealing with his alcohol problem and family affairs. At the time the petitioner attempted to purchase the hi-fi with another person's credit card, he was in an extremely depressed mental state. He suffered from the effects of an abusive childhood and a severe state of alcoholism. The petitioner has now turned his life around, attended in-patient therapy, is sober, engaged and a productive member of the casino industry.

As all of the above was undisputed, I FIND all of the above as FACT.

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APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> ...
>
> c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
>
> (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:
>
> ...
>
> N.J.S. 2C:5-1 (attmept to commit an offense which is listed in this subsection);
>
> ...
>
> N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);
>
> ....
>
> g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

> b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:
>
> ....
>
> (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the

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application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

e. 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.

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In

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determining whether the 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 or conduct;

(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4 and N.J.S.A. 2C:5-1, attempted theft by deception, which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends, by means of section 86g, that the petitioner's presentation of Barry Newsome's credit card in an attempt to purchase a hi-fi at Bamberger's Department Store constitutes a violation of N.J.S.A. 2C:20-4 and N.J.S.A. 2C:5-1, which under the circumstances disqualifies the petitioner from continued licensure.

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N.J.S.A. 2C:20-4, Theft by deception, provides in pertinent part:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

. . . .

c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

N.J.S.A. 2C:5-1, Criminal attempt provides in pertinent part:

a. Definition of attempt. A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(1) Purposely engages in conduct which would constitute the crime if the attendant circumstances were as a reasonable person would believe them to be;

(2) When causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing such result without further conduct on his part; or

(3) Purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

The Division established, and the petitioner admitted during his testimony, that he knowingly attempted to purchase a hi-fi valued at $1,259.00, the property of Bamberger's Department store by presenting a credit card for payment of the hi-fi, which credit card was the property of another. The petitioner did not have permission of the credit card holder to use the credit card. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:5-1. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:5-4a and N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

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Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from continued licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

(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 by affirmatively demonstrating his 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 or conduct;

3. The circumstances under which the offense or conduct occurred;

4. The date of the offense or conduct;

5. The age of the applicant when the offense or conduct was committed;

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

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

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.

In regard to the first criterion, Mr. Valentino is a casino licensee and is employed as a box person. As such, he does have direct responsibilities for actual gaming activities and does come in contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:20-4 attempted theft by deception, on one occasion during a period while employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. The petitioner was suffering from alcoholism and was in a severe state of depression. While the petitioner attempted to commit a serious theft offense, the underlying circumstances somewhat tend to mitigate the seriousness of the offense.

Fourth, the petitioner's misconduct occurred on October 17, 1985, when it ceased.

Fifth, the petitioner was 22 years old at the time of the first offense. I believe immaturity was a factor in this case.

Sixth, the petitioner's misconduct was isolated in nature. He has not committed any other violations of the criminal laws.

Seventh, the petitioner had experienced an abusive childhood and had been raised in an alcohol dependent family. He himself became an alcoholic and experienced sever emotional depression. He experienced confusion and anxiety.

Eighth, the petitioner has made a complete turn-around in his life. He successfully completed an inpatient alcohol rehabilitation program in early 1987, and he has received outpatient therapy over the last five years. He is now completely sober. He has even resided in a special facility with an alcohol free environment. He has been an excellent casino employee the last five years and has advanced from a craps dealer to a box person. He is obtaining a G.E.D., and is engaged to be married. He is now a courteous, respectful, hardworking, and honest individual. He is now an active body-builder who participates in competitions. He has accepted responsibility for his actions and has expressed remorse. He has no intentions of repeating his misconduct. Accordingly, there is little likelihood, if any, 1437

of a repetition. Essentially, there is nothing more the petitioner could do to establish his rehabilitation.

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

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Valentino was required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for his misconduct, regained control over his behavior, performed admirably within the casino industry during the past five years, is engaged, and has become a respected member of his community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Valentino is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

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I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Steven Valentino for the renewal of a casino employee license be **GRANTED.**

I hereby **FILE** my initial decision with the **CASINO CONTROL COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is authorized to make a final decision in this matter. If the Casino Control Commission does not adopt, modify or reject this decision within 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.* 52:148-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHAIR OF THE CASINO CONTROL COMMISSION, 3131 Princeton Pike, Building 5, CN 208, Trenton, New Jersey 08625**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 29, 1990
Date

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

11/1/90
Date

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 05 1990
Date

OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter of Mark C. Smith, dated September 1, 1990

P-2 Fairmont Institute Hospital Records, re: petitioner

For the Respondent:

R-1 Deptford Township Police Investigation Report, dated October 17, 1985

R-2 Superior Court of New Jersey, Gloucester County, Law Division (Criminal), Indictment No. I-1176-12-85

R-3 Order of Dismissal under the PTI Program, dated August 6, 1986

WITNESSES

For the Petitioner:

Randy J. Castaldi
Lisa M. Lopez
George J. Mahl, III
Lori Lewis
Steven Valentino, the petitioner

For the Respondent:

Steven Valentino, the petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-EA-333; 83-295
APPLICATION NO. 045758-21
REGISTRATION NO. 043702-40
OAL DOCKET NO. CCC 3437-89
ORDER NO. 90-33-5

APPLICATION OF MARIA E. VANEGAS,
a/k/a MARIA E. HERNANDEZ,
a/k/a MARIA E. FELICIANO
FOR A CASINO EMPLOYEE LICENSE

AND

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

Complainant,

ORDER

v.

MARIA E. VANEGAS, a/k/a MARIA E.
HERNANDEZ, a/k/a MARIA E. FELICIANO,

Respondent.

A hearing 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 August 15, 1990,

IT IS on this 30th day of August 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted and the complaint is dismissed substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3437-89

AGENCY DKT. NOS. 83-295; 89-EA-333

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

Petitioner,

v.

MARIA E. VANEGAS A/K/A MARIA E. HERNANDEZ, A/K/A MARIA E. FELICIANO

AND

APPLICATION OF MARIA E. VANEGAS FOR A CASINO EMPLOYEE LICENSE,

Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Michael Mallin, Esq., for respondent and applicant

Record Closed: September 22, 1989 Decided: July 2, 1990

BEFORE **RICHARD A. MURPHY,** ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement seeks revocation of respondent Maria E. Vanegas' casino hotel employee registration and opposes her application for a casino employee license under N.J.S.A. 5:12-86, 89-91, 107-108, 129-130, because she was

arrested and charged in December 1984 with theft by deception for allegedly taking and redeeming complimentary coupons and conspiracy to this end, which charges were later dismissed. Ms. Vanegas is now and has been for the last four years employed by Ceasar's Hotel and Casino as a kitchen porter.*

ISSUES

The following issues are to be resolved:

(1) Whether the applicant is disqualified from holding a license/registration under N.J.S.A. 5:12-86c(2) and 86g for commission of the offense of theft by deception and conspiracy, which indicates that licensure/registration would be inimical to the policies of the Casino Control Act and casino operations in the state of New Jersey under subsection c(2) even if this conduct has not or may not be prosecuted under the criminal laws of the state or pursuant to N.J.S.A. 5:12-86d is the subject of current prosecution or pending charges for an offense included within section 86c;

(2) Whether the applicant can demonstrate by clear and convicning evidence that she possesses the requisite good character, honesty and integrity required by N.J.S.A. 5:12-89b(2) and 90b, considering the factors of rehabilitation as set forth in 90h.

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*Procedural History: the Division of Gaming Enforcment (Division) filed its amended complaint seeking revocation with the Casino Control Commission (Commission) on Janaury 23, 1989 and objected to Ms. Vanegas's application for a casino employee license for a gaming/security employee position on January 18, 1989. A hearing was requested on April 26, 1989 and Commission filed this case with the Office of Administrative Law on May 9, 1989 for hearing as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing was held on September 1, to settle the issues, with a prehearing order issuing on September 15, 1989 and the hearing was held in Atlantic City on September 18, 1989, with the record closing on September 22, 1989, after receipt of additional documentation. The due date for submission of the initial decision was extended on several occasions for good cause not relevant to this case. I regret any hardship or inconvencience that his unavoidable delay may have caused the parties.

FINDINGS OF FACT

The facts are not in dispute. Ms. Vanegas (with the assistance of Diane Pinnex, an interpreter) testified as to the incident on December 14, 1984 at Resorts Hotel and Casino, which led to the charges against her for theft by deception. She explained that her husband had problems in 1984 and was in jail, forcing her to seek a job cleaning at Resorts. At the time, Resorts was offering "superstar coupons" as part of a slot machine promotion, which could be redeemed by players for gifts such as totebags, gold earnings, and the like. She claims that the supervisor at Resorts told all employees that they could not take coupons off the floor when cleaning, and had to throw them away with the other trash. Ms. Vanegas states that she never read a coupon, and has only limited ability with the English language. She knew that they were worth something to patrons, but not of any use to her, since she could not cash or redeem them, as employees were barred from doing so. She claims that a friend of her husband, one Jesus Albelo, visited the couple at their home, claimed that he was a member of the superstar coupon club at Resorts and asked the respondent if she had any coupons, to which she said "yes," and gave him coupons, which she claimed she had found on the floor of the casino. She estimates that she gave him 75 to 100 coupons because he claimed to be member of the superstar club and that "he came back with gifts". Ms. Vanegas does not recall if she gave the coupons to Albelo in order to get a gift for herself, but she acknowledges that she did take some earrings from Albelo.

She was interviewed on December 14, 1984, by the Division of Gaming Enforcement and asked of her involvement with Albelo's redemption of coupons. She admits that, when first questioned by the Division, she denied knowing Albelo or giving him coupons, although she later told the truth. Initially, no interpreter was present during her interview with the police. After she experienced difficulty in the interview without an interpreter, one was obtained and she states that she "confessed" to the DGE, which had "caught" and "arrested" her. The parties stipulate that the charges were downgraded by elimination of conspiracy, and then dismissed altogether on March 25, 1985. (J-1; J-2). There was also no dispute that, during the interview with State Police Sergeant L. Paccione, Vanegas threw away 17 slot superstar coupons from her purse into a nearby trashcan, while waiting to be searched by a female officer. The translater informed the sergeant that Vanegas has asked him if she could get rid of something she had on her, and the interpreter told her that she could not.

After leaving Resorts, Vanegas claimed that she unsuccessfully applied for unemployment benefits and then applied to Ceasar's Hotel and Casino, where she has worked for the last four years. In completing her Ceasar's employment application, which she understood and signed, she failed to put her arrest or theft by deception on the place indicated, because she "needed a job" and stated that this was the first application she filled out after being denied unemployment benefits. She also stated that her husband was still in jail, and that she was responsible for supporting his four children by a previous marriage.

Since 1984, Ms. Vanegas has had no more problems with the law. She offered a number of character references from co-workers at Ceasar's and others. (R-1 through R-16). Eighteen of her fellow employees at Ceasar's signed a letter vouching for her good character and stating that she is "a very considerate and friendly person who carries out her duties in a responsible manner" and that each of them "trust her very much and feels that she would not do any dishonest thing that would bring shame to her, Ceasar's, or others." (R-1). Other letters of reference enthusiastically attest to her good character, honesty and integrity, and other virtues. (R-2 through R-16).

There is no dispute as to the above facts and I so **FIND.**

DISCUSSION AND CONCLUSIONS OF LAW

The factors of rehabilitation, as set forth in 90h (and 90d), are relevant to both the issue of inimicality under N.J.S.A. 5:12-86c(2) and good character, honesty and integrity, which the applicant must demonstrate by clear and convincing evidence under N.J.S.A. 5:12-89b(2), 90b. See, DGE v. Davis, 8 N.J.A.R. 301, 314 (1985); Dunston v. Division of Gaming Enforcement, dec'd April 10, 1990, A-197-89T3. Those factors are as follows:

> [i]n determining whether the 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 or conduct;
>
> (3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

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

The Division argues that Ms. Vanegas should lose her registration and be denied licensure because of the 1984 coupon incident alone, where she took coupons against instructions, initially lied to the Division, and then tried to throw the coupons away in the midst of the investigation interview. The Division argues that she has shown no social condition contributing to the offense or other rehabilitation and that her licensure and registration would be inimical. The DAG also noted the respondent's failure to disclose her arrest record to Ceasar's when applying, and discounts character references from persons not aware of her past behavior.

Ms. Venages argues that she came from Columbia in the early 1980's and was suffering from "culture shock", to which her limited grasp of the English language contributed. She argues that the coupons were to be treated as trash, not as an article of value, and that she acted accordingly. Although she admitted that she knew they had value to others who could redeem them, she offered them to Albelo to share in the proceeds as part of the "old culture" of her native country of share and share alike and not from any desire to profit personally, although she did receive at least earrings.

In assessing the factors of rehabilitation, as set forth in N.J.S.A. 5:12-90, Ms. Venages argued that her position as a registrant has no contact with patrons, since she works when the casino is closed, did not involve serious conduct in that she was dealing

with discarded coupons, was an isolated and not a repeated act, and was complicated and compounded by her unfamiliarity of the English language. She states that she is now 28 years of age, and has not had any further problems with the law.

Given the above discussed and undisputed circumstances of the 1984 event involving discarded coupons which was isolated, and in light of respondent's subsequent unblemished work record in the casino industry for four years following dismissal or the theft charge, I **CONCLUDE** that her registration is not inimical to the policies of the Casino Control Act and the casino industry as per N.J.S.A. 5:12-86c2 and I further conclude that she has shown the requisite honesty, good character, and integrity for licensure under N.J.S.A. 5:12-89b and 90b, as construed and interpreted by the Appellate Division in the matter of the Dunston case, which is closely analogous to this case. Although the redemption of the coupons was serious in the sense that Ms. Vanegas knew that it was wrong, and, further, that it touched on her employment, it is outweighed by her overall excellent employment record, by which she was redeemed herself.

On the basis of the above findings of act and conclusions of law, it is **ORDERED** that the Division's complaint seeking revocation of respondent registration is **DISMISSED** and her application for casino employee license granted.

This recommended decision may be adopted, 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 7.2.90

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

DATE 7/5/90

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 10 1990

DATE

OFFICE OF ADMINISTRATIVE LAW

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LIST OF WITNESSES

Jessie Vanegas

LIST OF EXHIBITS

P-1 Criminal Complaint of theft by deception

P-2 Statement taken by the State Police

P-3 Application to Ceasar's

R-1 Character reference from 18 neighbors and co-workers of Maria E. Vanegas, dated September 14, 1989, to Michael Mallin

R-2 Letter of Sepember 2, 13, 1989, from the Spanish Community Center, To Whom It May Concern

R-3 Letter of reference from Steven D. Bayne, of September 13, 1989

R-4 Letter of reference from Daniel Delaney, Assistant Chef of the Lagoon Restuarant and Frankie's Crab House

R-5 Letter of Reference from Adelane Rodriquez

R-6 Letter of reference from Marisol Ruiz

R-7 Letter of reference from Jim Sprat

R-8 Letter of reference from Christine Bayne

R-9 Letter of reference dated September 12, 1989, from Lawrence Mack, Assistant Exeuctive Steward, Ceasar's Hotel-Casino

R-10 Letter of character reference of September 16, 1989, from Heeta Seciono

R-11 Letter of reference of September 10, 1989, from Lenine Malia

R-12 Letter of reference from Stephanie Earnst

R-13 Letter of reference from Susan Burns, dated December 15, 1989

R-14 Letter of reference from Nancy Defesio

R-15 Letter of reference from Evelyn Batiz

R-16 Letter of reference from O. DeJesus, dated September 17, 1989

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-95
REGISTRATION NO. 064533-40
OAL DOCKET NO. CCC 09348-89
ORDER NO. 90-41-10

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

Complainant,

v.

AMENDED
ORDER

DENISE E. VASILIEFF, a/k/a OVENS,

Respondent.

A hearing 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; and the Commission having considered the entire record of these proceedings at its public meeting of October 17, 1990,

IT IS on this 27th day of November 1990, ORDERED that the initial decision is modified as follows:

(1) The ALJ stated that, "an individual cannot affirmatively demonstrate rehabilitation pursuant to 90(h) and 91(d) in order to overcome the disqualifying offense of inimicality set forth in section 86(c)(2)." Init. dec. at 4-5.

This statement is incorrect for the reasons noted in the recent case of State v. Michael P. Tomlinson, Docket No. 89-344 (Commission order No. 90-36-8 dated September 21, 1990.

(2) The ALJ found that the respondent's February 29, 1988, arrest must be considered an isolated incident because she had never been arrested for, or convicted of, a controlled dangerous substance offense. This finding is rejected.

N.J.S.A. 5:12-90(h) requires the Commission to consider whether "the offense or conduct was an isolated or repeated incident." While it is true that this was the respondent's only arrest, the respondent's admission that she had used drugs a couple of times a week makes her conduct "repeated" within the meaning of section 90(h).

(3) The ALJ stated that the inimical analysis requires the respondent to establish that the mitigating factors in favor of continuing licensure greatly outweigh the aggravating factors. This statement is incorrect. For the reasons more fully stated in State v. Theodore Williams, Docket No. 84-288 (Commission order May 1, 1987) and State v. Michael P. Waters, Docket No. 84-419 (Commission order June 12, 1987), it is neither necessary nor appropriate to ascribe a burden of proof standard in these circumstances.

Here the Division established that the respondent committed drug offenses which, although not enumerated as disqualifiers in section 86(c)(1), occurred in circumstances that the Commission has previously found inimical to licensure. At this point, the Division of Gaming Enforcement had established a case for the respondent's disqualification. It was then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof) had shifted. For the reasons stated by the ALJ we find that the respondent carried her burden of proof.

(4) The ALJ stated that waiver requires the demonstration of extraordinary circumstances by clear and convincing evidence the part of the respondent. This statement is also incorrect.

The question of waiver arises only after the Commission has determined that a respondent has failed to demonstrate his or her rehabilitation. At this point

> the Commission may, in its discretion waive the disqualification if it finds that the interests of justice so require. While the respondent is free to urge the Commission to grant this extraordinary relief, we disagree that the respondent bears any burden of proof on the issue of waiver pursuant to N.J.S.A. 5:12-91(e).

IT IS FURTHER ORDERED that the casino hotel employee registration of Denise E. Vasilieff is not revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC-09348-89
AGENCY DKT. NO. 89-95

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

Petitioner,

vs.

DENISE E. OVENS VASILIEFF,

Respondent.

JAMES J. ARMSTRONG, Deputy Attorney General for petitioner
(Robert J. DelTufo, Attorney General of New Jersey, attorney)

DENISE E. OVENS VASILIEFF, respondent pro se

Record Closed: July 26, 1990 Decided: August 10, 1990

BEFORE **JOSEPH E. KANE, ALJ:**

STATEMENT OF THE CASE

The Department of Law & Public Safety, Division of Gaming of Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) requesting revocation of the casino hotel employee registration #64533-40 of the respondent. The Division alleges that respondent committed an act which is inimical to the Casino Control Act (Act) and the gaming industry pursuant to N.J.S.A. 5:12-86(c)2.

PROCEDURAL HISTORY

The Division filed its complaint with the Commission on October 11, 1988. Respondent requested a hearing on May 26, 1989 and on November 28, 1989 the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on April 23, 1990 by Jeff S. Masin, ALJ followed by a hearing which was held on July 26, 1990. The record was closed on July 26, 1990.

ISSUES

The issues to be resolved by this tribunal are as follows:

A. Did Ms. Vasilieff engage in conduct which, had it

been prosecuted would be an offense which would indicate that her licensure would be inimical to the policies of the Casino Control Act and thus requires revocation, N.J.S.A. 5:12-86(c)2; 86(g)?

B. If Ms. Vasilieff engaged in such conduct, is revocation the appropriate and required penalty?

C. Under the facts and circumstances of this case, would a waiver of disqualification be appropriate, pursuant to N.J.S.A. 5:12-91(e).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On February 29, 1988 respondent was employed as a food server in Caesars Hotel Casino. At the conclusion of her shift, approximately 3:00 to 3:30 P.M. she entered the employee's locker room bathroom. Her intent, was to get high by utilizing a packet of drugs given to her by a girlfriend earlier in the week. Injecting the drug into her system, which she believed to be cocaine, she immediately began to overdose and was rushed to the hospital by Caesars officials. State Police lab results indicated that the drug was not cocaine but heroine.

As a result of the above incident, the Division filed charges against the respondent on March 4, 1988 alleging in sum that respondent injected and used a controlled dangerous substance, heroine and she also possessed a hypodermic needle. (see P-3) Respondent entered a plea of guilty on September 7, 1988 to possession of a hypodermic syringe and use of a

controlled dangerous substance and was accepted into the conditional discharge program. The charge of possession of a controlled dangerous substance was dismissed. As a result of the February 29, 1988 incident, the Division now alleges that her continuing licensure within the casino industry would fall into the inimical category of Section 86(c)2 of the Act.

N.J.S.A. 5:12-86(c)2 states:

> "Any other offense under present New Jersey or federal law which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10 year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing."

Whether an individual's conduct rises to the level of inimicality to the Act and legalized gaming depends upon the circumstances of each case. The factors to be weighed and considered are the nature of the offense, the circumstances surrounding the offense including mitigating and aggravating factors, the amount of time that has passed from the offense to the date of the hearing. See Davis vs. Division of Gaming Enforcement, 8 N.J.A.R. 301 at 313. Included in this analysis are the eight factors set forth in section 90(h) and 91(d) of the Act. It must be emphasized that an individual cannot

affirmatively demonstrate rehabilitation pursuant to 90(h) and 91(d) of the Act in order to overcome the disqualifying offense of inimicality set forth in section 86(c)2. Nevertheless, the enumerated rehabilitation factors set forth in sections 90(h) and 91(d) of the Act can be utilized in the inimical analysis in order to determine whether an individual must be disqualified from participation in the gaming industry. These eight factors are:

1. The nature and duties of the position applied for;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the applicant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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.

Applying the criteria set forth above, **I FIND** as follows:

The conduct engaged in by the respondent is clearly one which falls within the inimical classification. Granted, respondent's conduct was not in clear view of patrons and the public, nevertheless, there is simply no rational basis or valid

excuse for the presence or use of illegal drugs within a casino. Employees who are under the influence of illegal drugs perform their duties in an impaired condition and thus constitute a risk for their individual employer as well as the gaming industry in general. Despite this finding, it is possible for respondent to retain her registration provided that her continuing licensure does not pose a continuing threat or is otherwise inimical to the Act and the industry. To make this determination, I turn to the eight factors set forth in 91(d) of the Act.

1. Nature and duties of the position.

Respondent has worked in the casino industry for the last ten years. She has held such positions as a cocktail waitress at Bally's Park Place, a food server at the Sands and Caesars and a reservationist at Trump Plaza where she is currently employed. Her duties include booking up charters, arranging schedules of all the incoming buses for her supervisors, providing reports regarding buses and passengers to the Casino Control Commission and dealing on a daily basis with group tour leaders. She has held this position for two years and four months as of the date of the hearing. Respondent has been recommended by her supervisor to participate in an upward mobility program. In addition, her supervisor requested and received authorization for an extraordinary salary increase based upon her job performance and increased work load since when assuming the position, she replaced two individuals.

2. Seriousness of the offense.

Considering the type of drug involved, heroine, and the location of its use, the offense of possession and use of a controlled dangerous substance must be considered to be of a serious nature.

3. Circumstances surrounding the offense.

Respondent's overdose was brought on because of her belief that the substance being injected was cocaine rather than heroine. Her justification for utilizing the drug was that she was upset over the recent dissolution of her marriage. In addition to the seriousness of the offense, the circumstances could have resulted in respondent's death. The overdose did not occur while respondent was on duty and thus, visible to patrons of the casino, however, as set forth above, the location and type of drug utilized leads to the decision that the offense and circumstances surrounding it constitute an inimical act.

4. Date of the offense.

The date of the overdose was February 29, 1988.

5. Age of the respondent.

Respondent was 30 years old on February 29, 1988. She is now 32 years old.

6. Has the conduct been repeated.

In reviewing respondent's testimony, I **FIND** that the best description of her involvement with illegal drugs prior to February 29, 1988 could be that of a binger. She could abstain

from drug usage for months at a time and then, depending on various social or family conditions, began utilizing drugs regularly for a two to three month period. Respondent had never been arrested or found guilty of possession or use of a controlled dangerous substance either prior to February 29, 1988 or thereafter. She has not been a user of illegal drugs since her overdose. Although prior to February 29, 1988 respondent had many periods of drug usage, I **FIND** that the February 29, 1988 incident was a one-time event in that it was the only time in her life that she was ever arrested for, or convicted of, the use of a controlled dangerous substance.

7. Social conditions contributing to the offense.

The only social condition contributing to the offense must be viewed more as a reason than as justification for the use of heroine. As more fully set forth in number 3 above, respondent used drugs to alleviate the pressures and conflicts resulting in her life from the break up of her marriage. As she testified, and I agree, such is simply not a justification for addictive behaviour.

8. Evidence of rehabilitation.

Respondent's overdose was the catalyst for her subsequent treatment and elimination of drugs from her life. Being very frightened by the incident, respondent within two days sought help from one of the in-house Caesars counsellors. Within two days thereafter, she was enrolled in the Bradford Drug & Alcohol

Rehabilitation Program in Alabama. The 28 day program consisted of intensive one on one and group counselling and mandatory attendance at NA and AA meetings. When leaving this program, respondent continued group theraphy with Dr. Earle in Atlantic City, New Jersey which also included attendance at NA meetings upwards of three times per week for two years. She no longer feels the need to attend NA meetings on a regular basis but does maintain regular contact with NA personnel.

Respondent describes her addiction as being one of "occasional use" in that she was always able to maintain employment and was able to go without drugs for weeks or months at a time. She learned through her rehabilitation in Alabama as well as through NA meetings that drugs used three times a week is "three times too many". Her husand who, prior to February 29, 1988 was her fiance, testified that he had a suspicion that repondent may have been using drugs.

Respondent did not utilize illegal drugs while on the premises of any casino except for the February 29, 1988 incident. Although knowing other Caesars employees who were utilizing drugs, respondent indicated that she never did drugs with them in an effort to conceal her usage of drugs. She never purchased drugs from other casino employees, instead, her supply came from "the street".

Respondent pled guilty to possession of a hypodermic syringe and use of a controlled dangerous subsance on September

7, 1988 and was granted entry into the conditional discharge program. She successfully completed the requirements of the program and received her discharge. The Bradford rehabilitation program was not ordered by the court. Instead, this was a "personal decision" made by the respondent with the assistance of a Caesars counsellor.

Respondent is now remarried and jointly supports with her husband two children. Both she and her husband regularly attend church services and functions. Additionally, respondent no longer associates with individuals who use illegal drugs.

CONCLUSIONS AND RECOMMENDATION

The act of using heroine on any portion of a casino premises clearly constitutes an act which is inimical to the interest and policies of the Casino Control Act and the gaming industry in general. The question which the Davis decision requires this tribunal to next answer is whether despite a finding of inimicality, will the continuing licensure of a hotel registrant constitute a threat to the operations of a casino hotel or otherwise impair the public's confidence in the gaming industry. Because the eight factors set forth in 91(d) of the Act are subsumed into the inimical analysis under Davis supra, this tribunal must be persuaded by clear and convincing evidence that the mitigating factors in favor of continuing licensure

greatly outweigh the aggravating factors including the initial determination that the act itself falls within the inimical category.

Much to respondent's credit is the fact that she voluntarily sought and accepted the drug rehabilitation program offered by Caesers Hotel Casino. Thereafter, she successfully completed her conditional discharge program and has remained drug free to the present. The results of her successful rehabilitation are evident by her remarriage and stable family life together with the respect she has earned from her employer, Trump Plaza. These mitigating factors, greatly outweigh respondent's commission of an inimical offense on February 29, 1988 and on balance, demonstrate by clear and convincing evidence that her retaining her hotel registration would not be inimical to the Casino Control Act and would not diminish the public's trust and confidence in the gaming industry.

Accordingly, for the reasons set forth above, **I HOLD** that respondent, Denise E. Ovens Vasilieff should be permitted to retain her casino hotel employee registration #64533-40.

UNDER THE FACTS OF THIS MATTER SHOULD A WAIVER BE GRANTED PURSUANT TO SECTION 91(e) OF THE ACT?

Section 91(e) of the Act states:

"The commission may waive any disqualification criterion for a casino employee consistent with the public policy of this act and upon a finding that the interests of justice so require."

It is thus clear from the language of the statute that it is possible for the Casino Control Commission to grant to a hotel registrant a waiver of an otherwise disqualifying offense whenever the facts and circumstances demonstrate that to do so would not otherwise harm or threaten the gaming industry. This extraordinary relief thus requires the demonstration of extraordinary circumstances by clear and convincing evidence on the part of the respondent.

In the instant matter, I have found that the respondent does face a disqualifer to which she has been rehabilitated. In the event the Casino Control Commission rejects this finding, I would urge the Commission under the individual facts of this matter to grant a waiver.

But for the fact that the February 29, 1988 incident occurred within the casino, there is no doubt that respondent would have met her burden to demonstrate by clear and convincing evidence her rehabilitation pursuant to Section 91(d) of the Act. The commission of the act within the casino brings into play the element of inimicality under Section 86(c)2 which places a higher burden on the respondent to show that the conditions which served as the catalyst for the offense are not now, nor will they be present in the future. Respondent has demonstrated by clear and convincing evidence that she is not now, nor will she be anything other than a hard-working and deeply motivated individual who wants to succeed in the industry.

For these reasons I **FIND** that respondent has demonstrated

that she is eligible to receive a waiver should the Casino Control Commission disagree with my findings as set forth above.

IT IS SO ORDERED.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 30, 1990
DATE

JOSEPH B. KANE, ALJ

OAL DKT. NO. CCC-09348-89

Receipt Acknowledged:

8-24-90
DATE

Dolores Host
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 27 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

pas

EXHIBITS

FOR PETITIONER:

P-1 New Jersey State Police Investigation Report dated March 4, 1988;

P-2 Caesars Security Department Incident Report dated February 29, 1988;

P-3 Atlantic City Municipal Court Complaints dated March 16, 1988;

P-4 New Jersey State Police Laboratory Report March 28, 1988;

FOR RESPONDENT:

R-1 Letter from Greg Sims, Primary Counselor, Bradford Alcoholism and Chemical Dependency Treatment Center dated June 16, 1988;

R-2 Memo dated May 2, 1990 from Joe Witterschein to Adrienne Beinfest;

R-3 Trump Plaza Hourly Employee Performance Review dated April 30, 1990;

WITNESSES

FOR PETITIONER:

Detective Victoria Grant, Division of Gaming Enforcement;

FOR REPONDENT:

Denise E. Ovens Vasilieff;
Valintine E. Vasilieff;

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-81
APPLICATION NO. 00147-95
OAL DOCKET NO. CCC 06210-89
ORDER NO. 90-47-6

APPLICATION OF JEANNETTE B. VITALI
FOR A JUNKET REPRESENTATIVE LICENSE

ORDER

A hearing 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 exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of November 28, 1990,

IT IS on this 10th day of December 1990, ORDERED that the initial decision is modified as follows:

> To find that the applicant has failed to establish that she possesses the requisite good character, honesty and integrity by clear and convincing evidence, noting not only the business relationship with her husband cited by the ALJ, but also the applicant's less than candid testimony, both at the OAL hearing and in sworn testimony at interviews conducted by the Division of Gaming Enforcement. The particular testimony which underscores this finding concerned, inter alia, the extent of Albert Vitali's involvement in the business of Jet Tours Travel World, the relationship between the applicant's husband and her with a reputed member of organized crime and the circumstances of the dissolution of the applicant's automotive sales business.

IT IS FURTHER ORDERED that the application of Jeannette B. Vitali is denied substantially for the reasons stated in

the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that Jeannette B. Vitali is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION

/RSM

STEVEN P. PERSKIE, CHAIRMAN

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 6210-89
AGENCY DKT. NO. 87-EA-81

IN THE MATTER OF THE APPLICATION OF JEANNETTE VITALI FOR A CASINO JUNKET REPRESENTATIVE LICENSE.

Donald Targan, Esq., for petitioner (Targan, Higbee & Kievit, attorneys)
Richard Morrissey, Deputy Attorney General, for respondent (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: August 10, 1990 Decided: September 7, 1990

BEFORE **EDGAR R. HOLMES**, ALJ:

Jeannette B. Vitali applied to the Casino Control Commission (Commission) for a junket representative license. The Division of Gaming Enforcement (Division) recommended to the Commission that her application be denied. She requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on February 5, 1990 and the following issues were identified for resolution at the plenary hearing:

A. Whether the petitioner possesses the requisite good character, honesty and integrity for casino junket representative licensure, pursuant to N.J.S.A. 5:12-89b(2).

B. Whether the petitioner possesses the requisite financial stability, integrity and responsibility for casino junket representative licensure pursuant to N.J.S.A. 5:12-89b(1).

C. Whether the petitioner possesses the requisite business ability and casino experience for casino junket representative licensure pursuant to N.J.S.A. 5:12-89b(3).

D. Whether the petitioner failed to cooperate with the Division pursuant to N.J.S.A. 5:12-80(d).

A plenary hearing convened on August 8, 9 and 10, 1990.

Jeannette B. Vitali has owned and operated a travel bureau in Pawtucket, R.I. since approximately 1974. She specializes in tours to Italy, but also has done tours to Spain, the Canary Islands, Egypt and Costa Rica. She operates a full service travel agency. She can issue tickets on airplanes and cruise ships; either package tours or individually planned vacations. She also does tours for sporting events such as super bowls, playoffs and world series. She seeks licensure in order to provide junkets to Atlantic City casinos.

The applicant's employees are well trained, her clients are satisfied, her books and records are clean, and her reputation is excellent. Some minor difficulties from her past, such as an arrest in 1961 and a problem with her license to operate a used car lot were satisfactorily explained by her. The arrest was never prosecuted and the licensing problems were really only a problem meeting the lot size requirements of the Rhode Island State Code.

The applicant is experienced in the operation of tours and could readily learn the Commission rules pertaining to casino junkets. She is a working owner operator and the sole owner of her business.

When the applicant was not engaged in business, she worked at home and raised four children. She was active in the Mothers Guild at her children's school; she was the president for several terms. After school, she taught confirmation classes at St. Theresa's. She was also a lunch monitor. Her priest describes her as having a "deep religious commitment" which has been a "guiding force in her life."

The applicant has additional letters testifying to her good character, honesty and integrity from her banker, the mayor of her city, the Chief of Police and many other friends, neighbors and clients. It is obvious that the applicant is loved and revered in her home town.

She favorably impressed the two New Jersey State Police officers who interviewed her in Rhode Island in connection with her application for licensure. In fact, she cooperated fully with the Division over a period of years. The Division's only complaint in this regard is that she refused to permit an investigator to go into her safe deposit box.

Nevertheless, the applicant is not licensable. She is married to an organized crime figure and the incidents of that relationship are the occasion of her disqualification from licensure.

A modern marriage, especially among the middle classes, is similar in many respects to a business. There are properties to be purchased, insured, sold and sometimes pledged as collateral. Real property and personal investments must be managed in order to produce income. Some couples, especially those who are regulated by a professional or governmental code of ethics, are quite effective in isolating one spouse, or shielding the other, from allegations of conflict of interest.

But this applicant has not isolated herself effectively from her husband's interests, or him from hers, where it was possible to have done so. Prior, however, to discovering these incidents, it is necessary to illustrate Albert Vitali's organized crime connections.

Albert "Albo" Vitali was born on April 16, 1924 in Johnstown, R.I. His rap sheet reveals that he was convicted of a bookmaking charge in 1947, of wagering without a tax stamp in 1962, of interstate theft in 1965 and of conspiracy to manufacture counterfeit slugs in 1979. He is suspected of being a "fence" for organized crime. There is probable cause to believe that this is so. John LaCross, a Rhode Island State Trooper of 12 years experience, the last four of which have been with the Organized Crime Intelligence Unit, recently wired up a criminal informant and sent him in to sell stolen goods to Albert Vitali. LaCross listened to the conversation on a monitor, and reports that Vitali was very receptive to the offer.

The deal fell apart however, when the informant could not produce the stolen goods.

In addition, based upon surveillance, the exchange of information with other police agencies, information developed from confidential informants, the results of analyzing the telephone toll charges of Albert Vitali, the testimony of experts in the field of organized crime in Rhode Island and elsewhere, LaCross has formed the opinion that Albert Vitali is an associate of the organized crime family in Rhode Island. This is corroborated by the fact that Albert Vitali has acted as surety for the purpose of bailing organized crime family members out of jail on numerous occasions. The property utilized by Albert Vitali for bail purposes is frequently the marital residence of the Vitali's.

In addition, Albert Vitali's connections with organized crime are not hidden and sub rosa, but they are open and notorious. In evidence is a television film clip of a local news team baiting Albert Vitali in the attempt to obtain an admission from him regarding his connections. The news item concerned a property owned by Jeannette Vitali and partner (not Albert) which they hoped to sell to the State for an off track betting parlor.

The applicant testified that she left the management of real property to her husband. The applicant owns over 4 million dollars worth of real property according to her personal history disclosure form. The form also indicates that all of the property is held by Albert and Jean Vitali. This is not wholly accurate as the property which was the subject of the TV news show mentioned above is owned by the applicant and a partner, not her husband.

In addition, Albert Vitali frequently accompanies his wife on tours. It may be supposed that he will accompany his wife on junkets. He has access to her bank and checkbook. It is true that he rarely exercises this right; he has only written eight checks in the last half dozen years, but the fact remains that he is a signatory on her business account. On at least one occasion, the applicant relied upon her husband to resolve a quarrel at a hotel between her clients and the hotel's management.

These incidents clearly indicate that the applicant and Albert Vitali have close and frequent business contact over and above the bonds of marriage. Albert Vitali

exercises a position of authority and responsibility in Jeannette Vitali's travel business. The Casino Control Act requires the exclusion of persons with known criminal records, habits or associations . . . from positions of authority or responsibility within casino gaming operations ... N.J.S.A. 5:12-1b (7).

Counsel for the applicant suggests that a conditioned license may or ought to be issued to the applicant in case an organized crime connection is found to append to her husband. There is authority for such a license. Elliot D. Strahl and Atlantic City Tours, Inc. Applicants v. Division of Gaming Enforcement, OAL DKT. NO. CCC 0575-83, initial decision July 20, 1983, Final Order affirming and modifying the initial decision September 21, 1983. In that case, the applicant's relationship to an organized crime figure was filial.

The Commission granted Elliot D. Strahl a license on the condition that he have no interest in any of his father's businesses. It also ordered that his employees have no interest with Strahl's father. Such an order in this case would exceed the bounds of propriety. All of the testimony revealed that Albert and Jeannette Vitali were a happily married couple who loved and respected each other.

A. I therefore **CONCLUDE** that the applicant does not possess the requisite good character, honesty and integrity for casino junket representative licensure pursuant to N.J.S.A. 5:12-89b(2).

I do so on the very narrow grounds that she is associated with an organized crime figure and that association would be inimical to the policy of the Casino Control Act and to gaming operations. In re Resorts Casino Application, 10 N.J.A.R. 244, 251.

B. I also **CONCLUDE** that, the applicant does not possess the requisite financial stability, integrity and responsibility for casino junket representative licensure pursuant to N.J.S.A. 5:12-89b (1).

Again, the fact that the applicant's finances are inextricably bound up with her husband's impels this conclusion.

C. I **CONCLUDE** that the applicant possesses the requisite business ability and casino experience for casino junket representative licensure pursuant to N.J.S.A. 5:12-89b (3).

D. I **CONCLUDE** that the applicant cooperated with the Division pursuant to N.J.S.A. 5:12-89 (d).

A safe deposit box is available to the government only upon the owner's death and then for tax purposes only. Even the bank does not know what is in a safe deposit box. A box usually contains a will or other instructions to the survivors, it might contain a personal and private momento. No one can guess what individuals may wish to place in a cashe. To force an opening of a safe deposit box at the whim of a licensing agent or as a matter of policy goes too far. In the event such a policy is permitted, it is only a matter of time until the Division searches bureau drawers, pocketbooks and body cavities.

I **ORDER** that the application for a casino junket representative licensure of Jeannette B. Vitali be **DISMISSED**.

This recommended decision may be adopted, 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

Sept 7, 1990
DATE

Edgar R Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

9/10/90
DATE

Kim Woods
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 12 1990
DATE

Jayne LaVecchia
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Marita Veira
Mary Allcock
Jeannette Vitali

For the Respondent:

Det. Robert J. Cardamone
Det. Leslie Robert Bice
Keith Hackett, N.J. State Police
John LaCross, Rhode Island State Police

EXHIBIT LIST

For the Petitioner:

P-1 Letter dated 8-1-90
P-2 Letter, dated 7-13-90
P-3 Letter dated 8-1-90
P-4 Letter, dated 7-18-90
P-5 Letter, dated 7-24-90
P-6 Letter, dated 7-26-90
P-7 Letter, dated 7-20-90
P-8 Letter dated 7-12-90
P-9 Letter, undated
P-10 Letter, dated 7-14-90
P-11 Letter, dated 7-16-90
P-12 Letter, dated 7-16-90
P-13 through P-26 Photographs

For the Respondent:

R-1 Testimony before the U.S. Senate Subcommittee
R-1A Statement of Colonel Stone for the U.S. Senate Subcommittee
R-1B The Grim Reapers
R-2 FBI Rap Sheet for Albert Vitali
R-3 Judgment and Probation/Commitment Order for Alfred Vitali
R-4 Investigative Report on Jeannette B. Vitali D/B/A Jet Tours Travel World
R-5 Criminal dossier on Albert Vitali
R-6 Letter from Department of Business Regulations dated 8-30-85
R-7 Bank Information Form on Jeannette B. Vitali D/B/A Jet Tours
R-8 1980 FBI State of Rhode Island Organized Crime Chart
R-9 Pawtucket, Rhode Island arrest card on Albert Vitali
R-10 Copy of Albert Vitali's non-licensed travel agency investigation; plus copies of newspaper articles on his arrest/case filing
R-11 Copies of canceled Jet Tours checks
R-12 Photos of Jet Tours van
R-13 Tour operator brochures distributed by Jet Tours

R-14 Partnership Agreement for A & B Partnership
R-15 Sole Owner/Operator Junket Enterprise Disclosure Form for Jeannette Vitali
R-16 Personal History Disclosure Form 2A for Jeannette Vitali
R-17 Personal History Disclosure Form 1 for Jeannette Vitali
R-17A 1987 U.S. Individual Income Tax Return for Albert & Jeannette Vitali
R-18 Sworn Interview of Jeannette Vitali dated 5-23-86
R-19 Sworn Interview of Jeannette Vitali dated 6-5-86
R-20 Letters from Rhode Island Motor Vehicle Dealers Commission dated 5-6-87 and 7-10-87
R-21 Letter to Jean Vitali from Rhode Island Motor Vehicle Dealers License Commission, dated 9-19-84
R-22 Letter to Mason Street Motors from Rhode Island Motor Vehicle, dated 6-13-84
R-23 Letter to Mason Street Motors from Rhode Island Motor Vehicle, dated 3-19-84
R-24 Copy of Application for Renewal of Travel Agency License
R-25 Dun & Bradstreet report on Countryside Trailer Park (Formerly: Jet Tours)
R-26 Newspaper article on Patriarca Bail
R-27 Transcript of Channel 10 News tape of 6-19-90 re: Albert Vitali
R-27A Tape
P-28 Letter from William J. Burke, 7-20-90
R-30 Newspaper Article 9-9-81
R-31 Criminal Case Face Sheet, Ralph S. Byrnes
R-32 Affidavit by Bail, Albert Vitali
R-33 Letter Rhode Island State Police Intelligence Unit, 8-7-81
R-33A Letter Rhode Island State Police Intelligence Unit, 8-11-81
R-34 Letter Rhode Island State Police Intelligence Unit, 5-19-86
R-35 Letter Rhode Island State Police Intelligence Unit, 10-1-87
R-36 Copies of photos
R-37 Printout, Theodore Robert Desilets
R-38 Photograph
R-39 Letter Rhode Island State Police Intelligence Unit, 1-26-82
R-40 FBI Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 89-CSI-9;
82-EA-62
APPLICATION NOS. 1743-70;
000875-11
VENDOR I.D. NO. 17713
OAL DOCKET NO. CCC 03174-89
ORDER NO. 90-33-2

APPLICATION OF WOODSROAD
MANAGEMENT CORP., t/a
HURST TRAVEL AND TRAVEL DIMENSIONS,
FOR A CASINO SERVICE INDUSTRY LICENSE
(QUALIFIER BERNARD FALKOW) AND APPLICATION
OF BERNARD FALKOW FOR A CASINO KEY
EMPLOYEE LICENSE

ORDER

A hearing 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 exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of August 15, 1990.

IT IS on this 20th day of September 1990, ORDERED that the initial decision is rejected and the Commission finds as follows:

1. Although not addressed by the Administrative Law Judge, the application of Bernard Falkow for a casino key employee license was also an issue in this case. Because Mr. Falkow was convicted in 1983 of a crime which is listed as a disqualifying offense in N.J.S.A. 5:12-86(c)(1) and because rehabilitation is not available to applicants for key employee licensure, his application must be denied. However, a qualifier of a casino service industry license applicant, like the applicant itself, may adduce evidence of is rehabilitation to persuade the Commission that he and it are qualified pursuant to N.J.S.A. 5:12-92(d).

2. After reviewing the rehabilitation factors listed in N.J.S.A. 5:12-90(h), the Commission concludes that Bernard Falkow has demonstrated his rehabilitation for the following reasons: (1) Mr. Falkow's crime, though serious, occurred over ten years ago; (2) Mr. Falkow has acknowledged his wrongdoing and expressed remorse for his actions; (3) Mr. Falkow cooperated with the investigation into his crime; (4) Mr. Falkow has no prior or subsequent arrests; (5) Mr. Falkow complied with all the conditions of his probation and made full restitution to the American Express Company; and (6) two businessmen and an attorney from the Atlantic City area have testified to Mr. Falkow's present good character, honesty and integrity.

3. In view of our conclusion that Mr. Falkow has established his rehabilitation we find that he has also established his good character, honesty and integrity as required by N.J.A.C. 19:43-1.3(c).

IT IS FURTHER ORDERED that the application of Bernard Falkow for a casino key employee license is denied; and

IT IS FURTHER ORDERED that Bernard Falkow is hereby found qualified pursuant to N.J.S.A. 5:12-92(c); and

IT IS FURTHER ORDERED that the application of Woodsroad Management Corp., t/a Hurst Travel and Travel Dimensions, for a non-gaming related casino service industry license is granted.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE ARMSTRONG, ACTING CHAIR

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3174-89
AGENCY DKT. NO. 82-EA-62;
89-CSI-9

IN THE APPLICATION OF WOODSROAD MANAGEMENT CORPORATION, T/A HURST TRAVEL AND TRAVEL DIMENSIONS, FOR A CASINO SERVICE INDUSTRY LICENSE, QUALIFIER: BERNARD FALKOW

Mark H. Sandson, Esq., for the applicant, Woodsroad Management, (Hankin, Sandson & Sandman, attorneys)

John M. Donnelly, Esq., for the qualifier, Bernard Falkow, (Clapp & Eisenberg, attorneys)

Julia L. McClure, Deputy Attorney General, for the Division (Robert J. Del Tufo, Attorney General of New Jersey, attorney)

Record Closed: October 31, 1989 Decided: July 5, 1990

BEFORE **RICHARD J. MURPHY**, ALJ:

STATEMENT OF THE CASE, ISSUE AND PROCEDURAL HISTORY

Woodsroad Management Corporation, t/a Hurst Travel and Travel Dimensions, applies to the Casino Control Commission (Commission) for a casino service industry (CSI) license pursuant to N.J.S.A. 52:12-86, 92c and N.J.A.C. 19:43-1.1 et seq., and the Division of Gaming Enforcement (Division) objects solely on the basis of the conviction of its qualifier, Bernard Falkow, for obtaining money by false pretenses in February of 1983. Because the Division's objection is limited to Mr. Falkow's problems, the parties agreed

that the hearing would proceed on that issue alone and that Woodsroad Management Corporation would abide by the Commission's determination of Mr. Falkow's qualifications (or disqualifications) and terminate his services, if that was required in order to obtain a casino service industry license. The sole issue, then, is whether Bernard Falkow possesses the requisite good character, honesty and integrity as a qualifier for a casino service industry license pursuant to N.J.S.A. 5:12-92 and 19:43-1.3c, considering any evidence of rehabilitation as set forth in N.J.S.A. 5:12-90h.*

FACTUAL DISCUSSION AND FINDINGS

There is no dispute as to the facts and the parties agreed to proceed only as to the qualifier, Bernard Falkow, as indicated. If Mr. Falkow is found not to be qualified, Woodsroad Management has agreed to terminate his services, and thereby remove what is now the only obstacle posed by the Division to granting its casino service industry license.

The parties stipulate that Bernard Falkow was the subject of an accusation in the Superior Court of New Jersey Law Division - Criminal, on February 15, 1983, which charged him with cheating and defrauding the American Express Company between May 1, 1979 and May 31, 1979 by making false representations, writings and pretenses for the purpose of deceiving the American Express Company as to the number of separate and distinct transactions involving the sale of traveler's checks so as to increase the amount of commissions received by a travel agency, of which Bernard Falkow was presiding and part owner. On February 15, 1983, Mr. Falkow plead guilty to the four counts of the accusation as to obtaining money by false pretenses in violation of N.J.S.A. 2A:111-1 and was sentenced to one year's probation, ordered to pay restitution of $4,000, and to perform 200 hours of community service.

*Procedural History: The matter of this application was filed with the Office of Administrative Law by the Casino Control Commission on May 1, 1989 for a hearing as a contested case pursuant to N.J.S.A. 52:14F-1 et seq., and a prehearing was held on September 1, 1989, with a plenary hearing held on October 31, 1989, as to the applicant's qualifier, Bernard Falkow. The record closed on that date, but the due date for submission of the initial decision was extended on several occasions for reasons not related to this case, including the backlog of cases resulting from a public utility matter affecting many residents of New Jersey. I regret any hardship or inconvenience that this unavoidable delay may have caused the parties.

On February 21, 1985, Mr. Falkow filed a personal history disclosure form with the Commission, as part of the application of Woodsroad Management, indicating that he was then employed as sales representative for Hurst Travel, the tradename of Woodsroad. (J-2). Woodsroad filed its casino service industry application on the same date, listing its services as "travel services including airline, rail and cruise ship tickets; car rentals and hotel reservations are sold to any casino/hotel desiring same, on and as need or required basis" (J-3 at 2). That application stated that Hurst Travel had been acquired by the applicant on December 31, 1984, and also that the applicant was an American Express travel service representative, offering all services, including selling of American Express traveler's checks to the general public. Bernard Falkow was listed as a qualifier for Woodsroad on the CSI application.

Mr. Falkow presented testimony from Roy Baylinson, Esq., who represented him in his criminal case, and who also characterized himself as a friend and social acquaintance of the qualifier for twenty five years. Though he initially considered opposing the charge of obtaining money by false pretense because of doubt as to whether the facts precisely fit under the statute, Mr. Baylinson decided to advise his client to "turn your back on it; and go on with your life." Although Mr. Baylinson noted on cross-examination that Mr. Falkow's action in defrauding American Express was "deliberate; intentional and stupid," he felt that Mr. Falkow was "more honester than the next" and not usually of criminal bent. Mr. Baylinson noted that Falkow was concerned with breaking even in his travel business and sought to meet his expenses in servicing American Express by falsely inflating the number of American Express Traveler's Check transactions, which increased the commissions paid by the company. Baylinson he places great trust in the applicant, and permits him to sign credit cards for his frequent travel arrangements. He explained that Falkow's problems began when American Express detected his practice some eleven years after it had occurred, when one of Falkow's travel agency employee's, who was suspected of theft, "turned on him" and claimed that American Express was being cheated by the agency.

Bernard Falkow testified that he returned to the Atlantic City/Margate area nineteen years ago with a Masters in Psychology and Personal Counseling, after his marriage had failed. He then went to work for his in-laws business but was later let go when the business was sold. Rather than go back into the psychology business after his experience in the business world, he chose to buy a travel agency in 1975, and then to merge with another agency in 1976. Since he lacked the expertise needed, he purchased

the agency with one Constance Duffield, who left after six months of work. After the merger in 1976, he obtained an account with Resorts International Hotel and Casino and his partner, Howell Edwards, suggested that they open a full service travel office with check cashing privileges for the benefit of hotel customers. Under an arrangement with American Express, Falkow would pay out the traveler's checks, and American Express would pay him 2/3 of one percent of the check cashing, as well as $1.50 fee for the servicing of each client. In 1978, the company opened its office in Resorts and applied to become a full service agency for American Express and The ATC Company (Air Traffic Corporation) but was asked by American Express and ATC Company to leave Resorts in March of 1979, because of the lack of any outside doorway and space provided by the casino/hotel. When he left Resorts, Falkow had four people employed and that he didn't want to lay them off. He felt that he was faced with the unacceptable choice of having to work until midnight every night or of keeping the Agency going on by splitting (falsely multiplying) American Express transactions to generate excess commissions to carry the payroll. He knew that this was "totally wrong," but split the proceeds to maintain the company and the staff. He also stated that "I knew I was doing something wrong. Definitely wrong." He feared detection in that all of his employees and partners knew of the scheme to defraud American Express and agreed to participate in it in order to keep their jobs. After returning to Resorts in June or July of 1979, the travel agency was robbed, and Falkow suspects that one of his former employees told the investigating officers of the fraudulent American Express practice.

After leaving the travel agency in May of 1980, Falkow filed an application for a Casino Key Employee license, in orderto work in a casino. In the course of the investigation of that application, the Division called him in in 1982 and asked if he had split transactions for American Express. He admitted that practice, and subsequently was charged and convicted. Prior to this time, he had heard no complaints from American Express as to the fraud. He freely admitted his deception practices to the Division and waived all his rights: in deciding to plead guilty and he felt relief that the matter was finally out in the open and had a sense of "catharsis."

Falkow paid made the restitution and served the 200 hours community service with the Knights of Pytheus, a fraternal organization loosely based on Greek mythology, in bingo games on Saturday nights. He also sold raffle tickets for Deborah Hospital. He claims that he is not employed directly by Woodsroad, but rather works as an independent contractor on outside sales, selling airline tickets and car reservations at a commission of

14% to 15% of his total volume. Although loosely he knew that what he had done in defrauding American Express was wrong, he claimed that he had never done anything like that before, and was never been arrested or convicted for anything, except a traffic ticket in 1965. He also states that he has had no further problems in the criminal area and been the subject of and no civil actions, except a class action against one of his former travel agencies. He claims that he is current with his tax payments, and has never been penalized for filing false returns. He is presently 48 years of age, and thus was 38 in May of 1979. He is also a member of the Rotary Club and Temple Beth El in Margate and had previously been named Man of the Year by the Knights of Pytheus.

On cross-examination, Falkow stated that, although he considers himself to be independent of Woodsroad, he was a qualifier for that company on its casino service industry application. He also condeded that it was his idea to instruct employees to split transactions and thereby increase commissions from American Express. Although, he knew that this practice was wrong, he did it for his employees, and wouldn't do it again. After his return to Resorts, he instructed employees to stop splitting, but they apparently kept up the practice, without his knowledge.

Roger Buffman, President and Chief Executive Officer of Brittany Jewelers and holder of a casino service industry license, testified that he has known Falkow since 1978, on both a personal and business basis, and has always found him to be a hardworker, with a character above reproach. He has used Falkow for business purposes and keeps his credit cards on file there, to be signed on his behalf by Falkow.

Rich Abel, the owner of an insurance agency in Northfield, also testified as character witness, having supervised Falkow's community service for the Knights of Pytheus, in which Mr. Abel is lodge chancellor and commander in that "society of charity and benevolance." Mr. Abel testified that Falkow's character was impeccable and that he suffered great embarrasment in performing his community service, by mopping up after the Knights of Pytheus on many a Saturday night.

There is no dispute as to the above facts and I so **FIND.**

FACTUAL DISCUSSION AND FINDINGS

The question presented is whether Bernard Falkow is disqualified and not rehabilitated for the purpose of acting as a qualifier on the application of Woodsroad Management Company for a casino service industry license, and whether he can demonstrate by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure under the Casino Control Act and regulations, considering any rehabilitation set forth in N.J.S.A. 5:12-90h. See, N.J.S.A 5:12-86,92c and N.J.A.C. 19:43-1.3c.

Both the question of disqualification and that of good character, honesty and integrity require the Commission to consider the factors of rehabilitation as set forth in N.J.S.A. 5:12-90h. See, Division of Gaming Enforcement v. Davis, 8 N.J.A.R. 301, 314 (1985); Dunston v. Division of Gaming Enforcement, Superior Court of New Jersey, App. Div., dec'd April 20, 1990, A-197-89T3:

> [i]n determining whether the applicant has affirmatively demonstrated his [or her] 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 of conduct;
>
> (3) The circumstances under which the offense of conduct occurred;
>
> (4) The date of the offense of conduct;
>
> (5) The age of the applicant when the offense of conduct was committed;
>
> (6) Whether the offense of conduct was an isolated or repeated incident;
>
> (7) Any social conditions which may have contributed to the offense of conduct;
>
> (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, with the recommendation of persons who have or have had the applicant under their superivision. N.J.S.A. 5:12-90h (emphasis added).

As to the factors of rehabilitation, Falkow argues that his function in selling and writing travel tickets is not sensitive, although it involves customers credit cards. The Division characterizes his duties at Woodsroad as significant, given the large volume of casino travel business handled by the company. As to the offense, Falkow raises the question as to whether there was a crime given the small amount of money involved (approximately $1000.00), but he states that his action was intentional and that he "knew it was wrong." He argues that he "did the human thing" by choosing to split transactions rather than lay off employees. His motive thus was not to profit, but, rather, he was following what his attorney characterized as the "great Atlantic City tradition" of keeping employees employed and the "ship afloat" in slow times. The Division emphasized that Falkow plead guilty to the serious charge of theft by pretense, and knew that he was cheating American Express, solely for business reasons.

Falkow also emphasized that the offense was some ten years ago in 1979, although it did not come to light until 1983. He stresses that the conduct was isolated to approximately to a month or so in 1979, and that he has had no further arrrests or charges lodged against him. He cites as social circumstances contributing to the offense, his great and sincere desire to keep his people employed, and feels that he has "taken his medicine" by admitting the offense readily and fulfilling all the requirements of his sentence. The Division replies that Falkow was a principal at the time of the offense, and that the agency was in the process of being licensed by the Casino Control Commission as a casino service industry. The DAG also stressed that Falkow was 38 years of age at the time of the offense and was the mastermind of the plan to defraud American Express, and not just some impressionable young person who had been influenced or pressured by others more familiar with the darker side of travel industry practices. The Division also takes issue with Falkow's description of his conduct as isolated, and stresses that it was repeated on a number of occasions for several months, and then stopped only to avoid detection. But for the fear of apprehension by American Express or the police, the fraud might have continued, at Falkow's direction. Falkow's character witnesses are dismissed as largely social and faternal acquaintances (lodge brothers), who are unlikely to have anything ill to add.

I agree with the Division's analysis and application of the Casino Control Act and regulations in this instance and **CONCLUDE** that Bernard Falkow is statutorily disqualified under N.J.S.A. 5:12-86c(1) for his role (which was the leading one) in defrauding American Express in 1979 and further **CONCLUDE** that he has failed to show the requisite rehabilitation under N.J.S.A. 5:12-90h and failed to establish, by clear and convincing evidence, his good character, honesty and integrity. Although the offense occurred almost ten years ago, the nature of the offense, which involved a premeditated plan to defraud American Express so that the partners in the travel agency wouldn't have to work late or terminate employess, was such an intentional fraud, without any substantial mitigating factors, that it overcomes the showing of the evidence of rehabilitation submitted, including compliance with the terms of probation and conviction. Bernard Falkow is clear and unequivocal in his statement that he knew that his actions were wrong in 1979, but proceeded to direct his employees to defraud American Express solely for business reasons. Under these circumstances and given the serious nature of the offense which raises doubts as to Woodsroad's ability to function as qualified casino service industry in the travel service area, I **CONCLUDE** that Bernard Falkow has failed to show rehabilitation under N.J.S.A. 5:12-90h and also failed to establish his good character, honesty and integrity by clear and convincing evidence. This result is consistent with other Commission decisions on casino service industry applications. See, e.g., The Application of Edward Bershad Company, t/a Penn Vending Company, 12 N.J.A.R. 48(1988).

I note again that the sole objecion raised by the Division is Bernard Falkow's involvement as a qualifier and thus this initial decision is limited to that objection. Woodsroad is thus free to terminate its relationship with Bernard Falkow, which is the only hurdle raised by the Division of Gaming Enforcement.

DISPOSITION

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that Bernard Falkow is disqualified from serving as a qualifier for the Woodsroad Management Company t/a Hurst Travel, in its application for a Casino Service Industry license under N.J.S.A. 5:12-92c.

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This recommended decision may be adopted, 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.

7.5.90
DATE

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

7/6/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 11 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

slf

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WITNESSES

Roy Baylinson
Bernard Falkow
Roger Buffman
Eric Abel

EXHIBITS

Joint Exhibits:

J-1 Certified copy of the accusation and the judgment of conviction

J-2 Personal History Disclosure Form

J-3 Business entity disclosure form of Woodsroad

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 89-EA-292
LICENSE NO. 022751-21
OAL DOCKET NO. CCC 00964-89
ORDER NO. 90-31-8

APPLICATION FOR RENEWAL OF THE CASINO EMPLOYEE LICENSE OF BEVERLY ANN WRIGHT

ORDER

A hearing 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 August 1, 1990,

IT IS on this 9th day of August 1990, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
VALERIE H. ARMSTRONG, ACTING CHAIR

BY: Dennis Daly

DENNIS DALY
SENIOR ASSISTANT COUNSEL

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 964-89
AGENCY DKT. NO. 89-EA-292

BEVERLY ANN WRIGHT,
Petitioner,
v.
STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,
Respondent.

David A. Spitalnick, Esq., for the petitioner (Vasser, Spitalnick, Bloom, Mazin & Stein, attorneys)

Ralph L. Fusco, Deputy Attorney General, for the respondent (Robert J. DelTufo, Attorney General of New Jersey, attorney)

Record Closed: June 15, 1990 Decided: June 25, 1990

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Beverly Ann Wright, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (craps and blackjack dealer and blackjack floorperson), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, she lacked the

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requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so she could be employed as a craps and blackjack floorperson at Trump's Castle Hotel and Casino. By letter to the Commission, dated December 2, 1988, the Division objected to the petitioner's application for licensure as a craps and blackjack dealer and a blackjack floorperson, asserting that the petitioner had committed the offense of theft by deception in violation of N.J.S.A. 2C:20-4 (third degree), which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on January 9, 1989, that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated January 28, 1989, which was received by the Commission on February 2, 1989, the petitioner requested a hearing. On February 3, 1989, the Commission transmitted the matter to the Office of Administrative Law, which received it on February 8, 1989, 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 in the matter was held before me on May 2, 1989. The issues set forth at the prehearing conference to be resolved at the hearing were:

A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, theft by deception.

B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on September 12, 1989, at the Municipal Courtroom, Pleasantville Police Building, Pleasantville, New Jersey. At this hearing, there was conflicting testimonial and documentary evidence. The deputy attorney general requested an adjournment in order to afford the parties the opportunity to obtain additional documentary evidence in order to clarify the previously presented unclear and conflicting evidence. This motion was granted. Several telephone conferences were held with the parties over the next few months in order to determine the status of the case and in an attempt to reschedule the matter. After discovery had been completed, the matter was rescheduled for the first available date for all parties concerned. The hearing reconvened and concluded on June 15, 1990, at the Municipal Courtroom, Pleasantville Police Building, Pleasantville, New Jersey, after which the record closed.

FACTUAL DISCUSSION

On November 3, 1980, the petitioner was hired to be a blackjack dealer at Harrah's Marina Hotel and Casino (Harrah's) (R-8). As Harrah's was in the process of opening, new employees who did not yet have their gaming licenses, such as the petitioner, were employed at "practice" gaming tables at the Golden Gate Motel. The petitioner began practice dealing for Harrah's on December 2, 1980 (R-11). In March of 1981, the petitioner received her gaming license from the Commission, and she began dealing blackjack at Harrah's. The petitioner worked at Harrah's until she resigned at the mutual agreement of parties on August 13, 1981 (R-8 & 11).

The petitioner collected unemployment benefits for twenty-four weeks while still employed at Harrah's (R-1, R-3, R-4, R-5, R-6). During this periods the petitioner earned $7,862.23, at Harrah's (R-1 & R-3). Because the petitioner failed to notify her local unemployment office of her employment, she received unemployment benefits to which she was not entitled in the amount of $2, 496.00 (R-3).

On July 1, 1982, the Department of Labor (Department) notified the petitioner that it would be conducting a hearing on July 8, 1982, concerning the unemployment benefits she had received from February 26, 1981 through August 19, 1981, while the petitioner had been employed (R-4). The petitioner attended the hearing and admitted that she had received unemployment benefits while employed at Harrah's (R-5). The Department of Labor thereafter made a determination that the petitioner had received unemployment benefits in the amount of $2,496.00, which she was not entitled to receive, and it imposed a fine of

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$460.00 for a total claim of $2,956.00 (R-3). The Department then filed a Certificate of Debt for $2,713.27 in the Superior Court of New Jersey on May 28, 1985, and a judgment was entered and docketed on September 4, 1985 (R-2).

Over the next several years, the petitioner's State income tax returns and homestead rebate checks were withheld by the State and applied to her outstanding debt for unemployment benefits. The petitioner made no other attempts to repay this debt. In 1989, the petitioner's fiancee received a Workers Compensation claim. He loaned part of his compensation claim receipts to the petitioner, and the petitioner repaid the unemployment claim in full. On March 14, 1989, the Division of Unemployment and Disability Insurance executed a Warrant for Satisfaction indicating its judgment against the petitioner had been satisfied and should be discharged. This warrant was filed in the Superior Court on March 29, 1989 (P-1 & P-2).

The petitioner worked at Spencer's Gifts from September 24, 1981 until December 2, 1981 (P-10). On November 23, 1981, the petitioner was hired as a parking valet attendant at the Atlantis Casino Hotel (R-1). Shortly, afterwards, the petitioner obtained a position as a blackjack dealer at the Atlantis. She continued in this employment until June 2, 1985 (R-10). The petitioner left the Atlantis in order to accept a position as a blackjack and craps dealer when Trump's Castle opened, the position she currently holds.

The petitioner testified that she was unemployed at the time she applied for unemployment and that she then became employed at Spencer's Gifts (T-32). She further testified that she did not apply for unemployment until after she was fired by Harrah's (T-39 & T-41). The petitioner applied for unemployment because she could not pay her bills. Her fiancee was an unemployed construction worker and they were raising three children at that time. Their telephone was disconnected and the heat and electric was shut off. She tried to keep up on her house payments, but she eventually lost her house. Her main concerns were putting food on the table, providing heat and electricity and keeping a roof over the family's heads.

In the last eight years, the petitioner has performed admirably in the casino industry. Her ratings at Trump's Castle have been "very good" to "above average" (P-3, P-4 & P-5). Her supervisor testified that the petitioner is a trustworthy person who is always prompt and pleasant. She has a good demeanor and is a good dealer.

The petitioner has a good reputation with other floorpersons and supervisors. In addition, the petitioner is the treasurer of her bowling league.

The petitioner submitted four letters of recommendation in her behalf: The first, written by another supervisor, Cynthia Wyatt, dated September 8, 1989, states that the petitioner is "thoughtful, positive and giving" (P-6). The second, written by Alyce Banta, property manager at the petitioner's apartment complex, dated September 8, 1989, states that the petitioner is a very warm and caring person, accepts responsibility for herself and others, is dependable and very honest (P-7). The third, written by Ms. Block, pre-enrollment specialist, Atlantic County Division of Training and Employment, dated September 7, 1989, states that the petitioner is "a warm, caring personable individual. She is honest, dependable, responsible and her overall character beyond reproach" (P-8). The final letter was written by Michael Watson, pit boss at Trump's Castle, dated August 5, 1989, states "[H]er character and personality have been an asset in her career as well as her life. I have also found Ms. Wright to be of good integrity and one who carries herself with the dignity of a lady who is progressive in all of her endeavors" (P-9).

The Division attempted to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity. As such, it is necessary to assess her credibility. Initially, her positoin in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. I found that during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner did not testify truthfully in every regard. While she candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances, she did not testify truthfully concerning the dates of her employment and the circumstances surrounding her receipt of the unemployment benefits. Specifically, she testified that she did not apply for unemployment until after she had been fired from Harrah's when in fact, she applied for unemployment approximately one month before she received her gaming license, while employed at Harrah's, and stopped receiving unemployment one week after leaving Harrah's in August. Accordingly, I am somewhat skeptical of the petitioner's testimony.

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FINDINGS OF FACT

1. On November 3, 1980, the petitioner was hired to be a blackjack dealer at Harrah's Marina Hotel and Casino (Harrah's).

2. The petitioner began practice dealing for Harrah's on December 2, 1980.

3. In March of 1981, the petitioner received her gaming license from the Commission, and she began dealing blackjack at Harrah's.

4. The petitioner worked at Harrah's until she resigned at the mutual agreement of parties on August 13, 1981.

5. The petitioner collected unemployment benefits for twenty-four weeks from February 26, 1981 through August 19, 1981, while still employed at Harrah's.

6. Because the petitioner failed to notify her local unemployment office of her employment, she received unemployment benefits to which she was not entitled in the amount of $2, 496.00.

7. On July 1, 1982 the petitioner attended a hearing at the Department of Labor and admitted that she had received unemployment benefits while employed at Harrah's.

8. The Department of Labor thereafter made a determination that the petitioner had received unemployment benefits in the amount of $2,496.00, which she was not entitled to receive, and it imposed a fine of $460.00 for a total claim of $2,956.00.

9. The Department then filed a Certificate of Debt for $2,713.27 in the Superior Court of New Jersey on May 28, 1985, and a judgment was entered and docketed on September 4, 1985.

10. Over the next several years, the petitioner's State income tax returns and homestead rebate checks were withheld by the State and applied to her outstanding debt for unemployment benefits. In 1989, the petitioner repaid the unemployment claim in full. On March 14, 1989, the Division

of Unemployment and Disability Insurance executed a Warrant for Satisfaction indicating its judgment against the petitioner had been satisfied and should be discharged. This warrant was filed in the Superior Court on March 29, 1989.

11. The petitioner worked at Spencer's Gifts from September 24, 1981 until December 2, 1981. On November 23, 1981, the petitioner was hired as a parking valet attendant at the Atlantis Casino Hotel. Shortly, afterwards, the petitioner obtained a position as a blackjack dealer at the Atlantis. She continued in this employment until June 2, 1985. The petitioner left the Atlantis in order to accept a position as a blackjack and craps dealer when Trump's Castle opened, the position she currently holds.

12. The petitioner applied for unemployment because she could not pay her bills. Her fiancee was an unemployed construction worker and they were raising three children at that time. Their telephone was disconnected and the heat and electric was shut off. She tried to keep up on her house payments, but she eventually lost her house. Her main concerns were putting food on the table, providing heat and electricity and keeping a roof over the family's heads.

13. In the last eight years, the petitioner has performed admirably in the casino industry. Her ratings at Trump's Castle have been "very good" to "above average". The petitioner is a trustworthy person who is always prompt and pleasant. She has a good demeanor and is a good dealer.

14. The petitioner is the treasurer of her bowling league.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, 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:
>
> a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
>
> . . .

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c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

(1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c.95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

. . .

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

. . . .

g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of 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. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity,

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the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of casino employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

. . .

e. 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.

. . .

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the 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 or conduct;

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(3) The circumstances under which the offense or conduct occurred;

(4) The date of the offense or conduct;

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

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

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

(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.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception, which constitutes a violation of section 86c(1), and that, accordingly, she is disqualified from continued licensure.

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends, by means of section 86g, that the petitioner's receipt of unemployment benefits while she was employed at Harrah's constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:20-4, Theft by deception provides:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of

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> mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> b. Prevents another from acquiring information which would affect his judgment of a transaction; or
>
> c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.
>
> The terms "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

This statute has been held applicable where one wrongfully receives unemployment benefits. In State v. Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

> As we read the trial judge's findings, defendant knowingly misrepresented his employment status to obtain money "under pretense that he is . . . out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.[1] It is not necessary to prove a "corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super, 137, 141-143 (App. Div.), certif. den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked - or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

The Division established that the petitioner knowingly received unemployment benefits to which she was not entitled from the Department of Labor. Accordingly, I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further CONCLUDE that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

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1 N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

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Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g.

(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 by affirmatively demonstrating 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 or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the applicant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
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 person who have or have had the applicant under their supervision.

First, Ms. Wright is a casino employee and is employed as a blackjack and craps dealer. As such, she does have direct responsibilities for actual gaming activities and does have contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by Deception - third degree, over a twenty-four week period during which she was

employed in the industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. The petitioner's fiancee was unemployed and they could not pay their bills. Their telephone, heat and electricity were disconnected. Eventually, their house was taken. The petitioner's main concerns were to provide food and shelter for her family. She was simply concerned with providing for her family in a time of crisis. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tend to mitigate somewhat the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from the beginning of March 1981 until mid-August 1981, when it ceased.

Fifth, the petitioner was 25 years of age at the time of the offense. I believe that immaturity was a factor in this case. The petitioner believes she has learned with maturity and such conduct will not occur again. She is now a responsible, productive member of society. In addition, it is clear that the underlying circumstances affected the petitioner's ability to deal reasonably with the problem at that time.

Sixth, the petitioner has one prior arrest. As a juvenile, she was arrested in New York for what may have been an accessory in a theft case. The charges against the petitioner were dismissed as she was not guilty. The theft had been committed by her brother. The petitioner has not committed any other violation of the criminal laws since 1981.

Seventh, because of the underlying circumstances, the petitioner was only concerned with assisting her fiancee in raising and providing for their family. Her family's security and her financial situation were major concerns. Because of her youthfulness, she was unaware of other alternatives which she could have pursued.

Eighth, the petitioner has made substantial rehabilitative efforts. She has made full restitution. The petitioner has been employed in the casino industry continuously since November 1981. Her performance has been exemplary. She has demonstrated that she has matured and has accepted responsibility. Her home life has also stabilized, and she has demonstrated her acceptance of responsibility. She

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raised a family and participates in community activities such as being treasurer of the local bowling league. The petitioner has expressed remorse for, and has no intention of repeating; her misconduct. Accordingly, there is little likelihood, if any, of a repetition. Essentially, there is nothing more the petitioner could do to establish her rehabilitation.

If the unemployment fraud had been recent, or if the petitioner did not have an excellent record in the casino industry or reputation over the last nine years, I would not hesitate to recommend that her application for the renewal of her casino employee license be denied; however, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Wright 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 Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 248 (1979). 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, 10 N.J.A.R. 295, 297-298 (1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 296.

It is readily apparent that the petitioner's misconduct was aberrant and that she is otherwise a person of good character, honesty and integrity. The misconduct did not directly involve her licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for her misconduct, made full restitution, regained

control over her behavior, performed admirably within the casino industry during the past nine years, is engaged, has raised a family, and has become a respected member of her community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Ms. Wright is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitoner has established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Beverly Ann Wright for the renewal of a casino employee license be **GRANTED**.

This recommended decision may be adopted, 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 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** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 25, 1990
DATE

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

6/27/90
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 29 1990
DATE

OFFICE OF ADMINISTRATIVE LAW

caj

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Warrant for Satisfaction, dated March 14, 1989

P-2 Department of Labor letter, dated March 14, 1989

P-3 Trump's Castle Dealer's Annual Performance Review, dated June 2, 1987

P-4 Trump's Castle Dealer's Annual Performance Review, dated June 2, 1989

P-5 Trump's Castle Dealer's Annual Performance Review, dated June 17, 1988

P-6 Letter of Cynthia Wyatt, dated September 8, 1989

P-7 Letter of Alyce Banta, dated September 8, 1989

P-8 Letter of M. Block, dated September 7, 1989

P-9 Letter of Michael Watson, dated August 5, 1985 (sic)

P-10 Employment records from Spencer Gifts, dated September 26, 1989

For the Respondent:

R-1 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Benefit Payment and Employment Record from Harrah's Marina Hotel and Casino

R-2 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Superior Court of New Jersey, dated May 28, 1985

R-3 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund on Unemployment Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation, re: mailed September 2, 1982

R-4 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance: Notice of Hearing, dated July 1, 1982

R-5 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance: Record of Hearing, dated July 8, 1982

R-6 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: Beverly Ann Wright, as of April 11, 1982

R-7 Employee License Renewal Application, dated March 31, 1986

R-8 Harrah's Hotel and Casino Employee Job History

R-9 Not in evidence

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R-10 Letter from Anne Dalessandro, Atlantis Casino Hotel, dated September 21, 1989

R-11 Harrah's Hotel and Casino computer print-out, dated December 7, 1985

WITNESSES

For the Petitioner:

Beverly Ann Wright, the petitioner
Margaret Nargi

For the Respondent:

None

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